

CALIFORNIA LAW REVISION COMMISSION

Pre-Print RECOMMENDATION

Statutory Clarification and Simplification of CID Law

Note: This is a pre-print report. The Law Revision Commission has approved the substance of this report, but minor editorial changes may be made prior to final publication.

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California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303-4739
650-494-1335
<commission@clrc.ca.gov>

SUMMARY OF RECOMMENDATION

The Law Revision Commission recommends that the existing Davis-Stirling Common Interest Development Act be repealed and replaced with a new statute that continues the substance of existing law in a more logical and user-friendly form.

The new statute would provide the following advantages for property owners who must read, understand, and apply the law governing common interest developments:

- (1) Related provisions would be grouped together in a logical order. This would make relevant law easier to find and use. It would also provide a clear organization to guide the future development of the law.
- (2) Sections that are unclear or confusing would be revised for clarity, without any change to their substantive effect.
- (3) Sections that are excessively long would be divided into shorter sections.
- (4) To the extent practical, terminology would be standardized.
- (5) Various noncontroversial substantive improvements would be made.

This recommendation was prepared pursuant to Resolution Chapter 98 of the Statutes of 2009.

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Inclusion of the name of an individual or organization should not be taken as an indication of the individual's opinion or the organization's position on any aspect of this recommendation. The Commission regrets any errors or omissions that may have been made in compiling these acknowledgments.

KAZUKO K. ARTUS
DARREN M. BEVAN, *Community Associations Institute*
TYLER P. BERDING
SANDRA M. BONATO, *State Bar Real Property Law Section*
MICHAEL BROWN
WENDY BUCKNAM, *Community Associations Institute*
OLIVER BURFORD, *Executive Council of Homeowners*
KAREN D. CONLON, *California Association of Community Managers*
CATHY L. CROSHAW
SKIP DAUM, *Community Associations Institute*
SAMUEL L. DOLNICK
LUCILLE FINDLAY
TOM FRUTCHEY
JOHN D. GARVIC, *Executive Council of Homeowners*
E. HOWARD GREEN
BETH GRIMM
DON HANEY
CAROLE HOCHSTATTER
MARY M. HOWELL, *State Bar Real Property Law Section*
SCOTT JACKSON
RAVI KAPOOR
GARY S. KESSLER, *State Bar Real Property Law Section*
INGRID M. KOLLMAN
PAUL J. KRUG
DAVID LEVY

JAMES P. LINGL
KERRY MAZZONI, *Executive Council of Homeowners*
DUNCAN R. MCPHERSON
DAVID K. MILTON, *California Association of Realtors*
MARJORIE MURRAY, *California Center for Homeowner Association Law; California Alliance for Retired Americans*
ELAINE ROBERTS MUSSER, *California Center for Homeowner Association Law*
DAVID NOBLE
ALEC PAULUCK
GEORGE B. PORTER, *Sun City Roseville*
EARL "DICK" PRUESS, *Community Associations Institute*
KAREN RAASCH
FRANK H. ROBERTS
MARION RUSSELL
PETER T. SAPUTO
NANCY T. SCULL
BOB SHEPPARD
CURTIS C. SPROUL, *State Bar Real Property Law Section*
DAVID M. VAN ATTA
JENNIFER WADA, *California Association of Community Managers*
JEFFREY G. WAGNER
NORMA WALKER
CHRISTOHER WAUD

STATUTORY CLARIFICATION AND SIMPLIFICATION OF CID LAW

BACKGROUND

A common interest development (“CID”) is a housing¹ development characterized by (1) separate ownership of dwelling space (or a right of exclusive occupancy) coupled with an undivided interest in common property, (2) covenants, conditions, and restrictions that limit use of both the common area and separate ownership interests, and (3) management of common property and enforcement of restrictions by an owners’ association. CIDs include condominiums, community apartment projects, stock cooperatives, and planned unit developments.²

There are over 49,000 CIDs in California, ranging in size from three to 27,000 units each.³ These developments comprise over 4.9 million total housing units.⁴ Most CIDs are relatively small, with over half consisting of 25 or fewer separate interests.⁵

An owners’ association is run by volunteer directors who may have little or no prior experience in managing real property, operating a nonprofit association or corporation, complying with the laws regulating CIDs, and interpreting and enforcing the restrictions and rules imposed by the governing documents of an association.⁶

Association management is made more difficult by the complexity of the law that governs CIDs. The main body of statutory law governing CIDs is the Davis-Stirling Common Interest Development Act.⁷ That statute is not well organized or easy to use. Related provisions are not always grouped together in a coherent order. Some provisions are overly long and complex. Others are phrased or

1. Although most CIDs are residential, a CID may also include commercial units. An entirely nonresidential CID is exempt from many of the laws that govern residential or mixed use CIDs. See Civ. Code § 1373.

2. See Civ. Code § 1351.

3. Levy & Erlanger, *2010 California Community Association Statistics* 1 (2010).

4. *Id.*

5. Over two-thirds of associations have 50 separate interests or fewer. *Id.*

6. Many associations contract for professional management, accounting, and legal assistance. However, most associations are small and may not be able to afford those services. See *supra* note 5.

7. Civ. Code §§ 1350-1378. Note that an association formed as a nonprofit corporation is also subject to the relevant provisions of the Corporations Code. On some issues, the Davis-Stirling Common Interest Development Act expressly supersedes any conflicting provision of the Corporations Code. See, e.g., Civ. Code §§ 1363.03(n), 1365.2(l). The proposed law would make some changes to reflect the supremacy of Section 1363.03. See proposed Civ. Code § 4365 *infra*.

1 structured in ways that make them difficult to understand. The terminology used in
2 the statute is not always consistent. These shortcomings can make it difficult for
3 homeowners to understand their rights and obligations under the law.

4 OVERVIEW OF PROPOSED LAW

5 The Law Revision Commission recommends that the existing Davis-Stirling
6 Common Interest Development Act be repealed and replaced with a new statute
7 that would continue the substance of existing law in a more logical and user-
8 friendly form.

9 The proposed law would provide the following advantages for property owners
10 who must read, understand, and apply the law governing CIDs:

- 11 (1) Related provisions would be grouped together in a logical order. This would
12 make relevant law easier to find and use. It would also provide a clear
13 organization to guide the future development of the law.⁸
- 14 (2) Sections that are unclear or confusing would be revised for clarity, without
15 any change in their substantive effect.
- 16 (3) Sections that are excessively long would be divided into shorter sections.
- 17 (4) To the extent practical, terminology would be standardized.
- 18 (5) Various noncontroversial substantive improvements would be made.

19 For the most part, this would be a nonsubstantive reform. However, the
20 proposed law also includes a number of minor substantive improvements. All of
21 those proposed changes are specifically described in this recommendation. In
22 addition, the official Comments that follow each section of the proposed law
23 identify any substantive changes that the section would make.

24 A “disposition table” following the proposed law shows the precise relationship
25 between every provision of the existing Davis-Stirling Common Interest
26 Development Act and the provision of the proposed law that would continue it. In
27 a few instances, an existing provision would not be continued in the proposed law
28 because it is unnecessary. Those provisions would be listed in the disposition table
29 as “omitted.”

8. One of the sources of the complexity of the Davis-Stirling Common Interest Development Act is the lack of a comprehensive organizational structure. As changes are made to the law, it is not always clear where to add new provisions, which perpetuates the poor organization of the law. That problem was partially addressed by the addition of chapter and article headings, pursuant to a Law Revision Commission recommendation. See *Organization of Davis-Stirling Common Interest Development Act*, 33 Cal. L. Revision Comm’n Reports 1 (2003); 2003 Cal. Stat. ch. 557.

ORGANIZATIONAL AND DRAFTING IMPROVEMENTS

There are a number of problems with the organization and drafting of the existing Davis-Stirling Common Interest Development Act:

- Some provisions on similar topics are not in close proximity to each other, making it difficult to find all of the law that governs a particular topic.⁹
- Some sections are overly long and complex.¹⁰
- Some sections are difficult to understand, because of their phrasing.¹¹
- Inconsistencies in the terminology used in the existing statute may lead to misunderstandings.¹²

The proposed law would address those problems, as described below.

Improved Organization

The proposed law would reorganize the provisions of existing law so as to group provisions by subject matter, in a coherent and logical order.

The proposed law would be divided into 11 chapters, beginning with provisions that govern the operation of the proposed law itself. It would continue with provisions governing the creation of a CID and the character of a CID as a form of property ownership. It would conclude with provisions governing the operation of the governing association of a CID.

The structure of the proposed law would be as follows:

9. For example, two existing provisions that determine the application of the Davis-Stirling Common Interest Development Act are located near the very beginning and end of the Act. See Civ. Code §§ 1352, 1374. In the proposed law, those provisions are adjacent, in a chapter entitled “Application of Act.” See proposed Civ. Code §§ 4200, 4201 *infra*.

10. For example, the principal existing provision on member elections in a CID is a single section comprised of over 1,840 words, divided into 41 separate subdivisions and paragraphs. See Civ. Code § 1363.03. In the proposed law, that section would be recast as an article entitled “Member Election,” comprised of seven shorter sections, each addressing a single topic. See proposed Civ. Code §§ 5100 (application of article), 5105 (election rules), 5110 (inspector of elections), 5115 (voting procedure), 5120 (counting ballots), 5125 (ballot custody and inspection), 5130 (proxies) *infra*.

11. For example, existing Civil Code Section 1367.6(a) refers to the jurisdiction of the small claims division of the superior court by referencing two sections of the Code of Civil Procedure. This reference will be difficult for a layperson to understand. In the proposed law, an express reference to the “small claims court” is added to make the meaning of the provision clearer. See proposed Civ. Code § 5658 *infra*.

12. For example, existing law uses the terms “director,” “board member,” and “member” to refer to a member of an association’s board of directors. Such inconsistent terminology can lead to confusion (especially with respect to the term “member,” which can also refer to a member of the association who is not on the board of directors). To address the problem, the proposed law would add a statutory definition of the term “director,” and revise a number of provisions to replace inconsistent variants with the defined term. See proposed Civ. Code § 4140 *infra*. Similarly, the proposed law would standardize the terminology used to refer to the board, board meetings, common area, the declarant, governing documents, a managing agent, or a member.

1	CHAPTER 1. GENERAL PROVISIONS
2	Article 1. Preliminary Provisions
3	Article 2. Definitions
4	CHAPTER 2. APPLICATION OF ACT
5	CHAPTER 3. GOVERNING DOCUMENTS
6	Article 1. General Provisions
7	Article 2. Declaration
8	Article 3. Articles of Incorporation
9	Article 4. Condominium Plan
10	Article 5. Operating Rules
11	CHAPTER 4. OWNERSHIP AND TRANSFER OF INTERESTS
12	Article 1. Ownership Rights and Interests
13	Article 2. Transfer Disclosure
14	Article 3. Transfer Fee
15	Article 4. Restrictions on Transfers
16	Article 5. Transfer of Separate Interest
17	CHAPTER 5. PROPERTY USE AND MAINTENANCE
18	Article 1. Use of Separate Interest
19	Article 2. Modification of Separate Interest
20	Article 3. Maintenance
21	CHAPTER 6. ASSOCIATION GOVERNANCE
22	Article 1. Association Existence and Powers
23	Article 2. Board Meeting
24	Article 3. Member Meeting
25	Article 4. Member Election
26	Article 5. Record Inspection
27	Article 6. Record Keeping
28	Article 7. Annual Reports
29	Article 8. Conflict of Interest
30	Article 9. Managing Agent
31	Article 10. Government Assistance
32	CHAPTER 7. FINANCES
33	Article 1. Accounting
34	Article 2. Use of Reserve Funds
35	Article 3. Reserve Planning
36	CHAPTER 8. ASSESSMENTS AND ASSESSMENT COLLECTION
37	Article 1. Establishment and Imposition of Assessments
38	Article 2. Assessment Payment and Delinquency
39	Article 3. Assessment Collection
40	CHAPTER 9. INSURANCE AND LIABILITY
41	CHAPTER 10. DISPUTE RESOLUTION AND ENFORCEMENT
42	Article 1. Discipline and Cost Reimbursement
43	Article 2. Internal Dispute Resolution
44	Article 3. Alternative Dispute Resolution Prerequisite to Civil Action
45	Article 4. Civil Actions
46	CHAPTER 11. CONSTRUCTION DEFECT LITIGATION

47 This new organization would make the law easier to use, especially for the many
48 non-attorneys who must read and understand the law in order to protect their
49 property rights and manage their communities. (As noted above, the majority of

1 CIDs are quite small.¹³ Most property owners in these small CIDs will need to
2 read and understand the Davis-Stirling Common Interest Development Act
3 without the benefit of professional managers or legal counsel.)

Shorter, Simpler Sections

4 Some sections of the existing Act are excessively long. Excessively long
5 sections can obscure relevant details of law, especially if a single section addresses
6 several different subjects.

7 A better approach is to divide the law into a larger number of smaller sections,
8 with each section limited to a single subject. Short sections have numerous
9 advantages. They enhance readability and understanding of the law, and make it
10 easier to locate and refer to pertinent material. In contrast to a long section, a short
11 section can be amended without undue technical difficulties and new material can
12 be inserted where logically appropriate. This facilitates sound development of the
13 law. The use of short sections is the preferred drafting technique of the California
14 Code Commission,¹⁴ the Legislature,¹⁵ the Legislative Counsel,¹⁶ and the Law
15 Revision Commission.¹⁷

Clarifying Revisions

16 The proposed law would revise a number of provisions of the Davis-Stirling
17 Common Interest Development Act, to make their meaning clearer without
18 changing their substantive effect.¹⁸ Other technical clarifying revisions would add
19 or adjust subdivision or paragraph designators to facilitate reference,¹⁹ or correct
20 cross-reference errors.²⁰

Consistent Terminology

22 The terminology used in existing law is not consistent. In many cases, two or
23 more different terms are used to describe the same thing. This can lead to
24 misunderstanding and unnecessary litigation to resolve ambiguities. The proposed
25 law would standardize terminology to the extent practical.
26

13. See *supra* note 5.

14. California Code Commission, *Drafting Rules and Principles for Use of California Code Commission Draftsmen*, 1947-48 Report, app. G, at 4.

15. Senate & Assembly Joint Rule 8 (May 14, 2009).

16. Legislative Counsel of California, *Legislative Drafting Manual* 26-28 (1975).

17. Commission Staff Memorandum 76-24 (Feb. 17, 1976); First Supplement to Commission Staff Memorandum 85-64 (May 31, 1985).

18. See proposed Civ. Code §§ 4095(b), 4175, 4201, 4255, 4785(c), 5110(b), 5225, 5230, 5240(b), 5510, 5515, 5520, 5620, 5658, 5700(a), 5965 *infra*.

19. See proposed Civ. Code §§ 4185, 4190, 4270, 4930 *infra*.

20. See proposed Civ. Code §§ 5300(b)(3), 5565, 5720(c), 5730, 6000 *infra*.

1 The proposed law would also add new definitions for commonly used terms or
2 concepts, to facilitate reference and increase familiarity with common concepts.²¹

3 Some of the existing definitions in the Davis-Stirling Common Interest
4 Development Act have expressly limited application. This creates uncertainty as to
5 the meaning of the defined terms when they are used in sections that are not
6 subject to the definitions. Where appropriate, the proposed law would generalize
7 these definitions, so that they apply to the Act as a whole.²² This will simplify
8 understanding of the law, lead to more uniform results, and provide a settled
9 definition for the future development of the law.

10 There are also some existing definition sections that contain non-definitional
11 rules. This creates a risk that the embedded rules will be overlooked. The proposed
12 law would relocate substantive rules that are currently embedded in definitions.²³

13 SUBSTANTIVE IMPROVEMENTS

14 Although the primary goal of the proposed law is the nonsubstantive
15 reorganization of the existing Davis-Stirling Common Interest Development Act,
16 in order to make it is easier to use and understand, the proposed law would also
17 include a number of minor substantive improvements.²⁴ Those minor
18 improvements are discussed below.

19 Improvements Relating to Governing Documents

20 *Authority of Law and Governing Documents*

21 The proposed law would provide guidance on two fundamental aspects of CID
22 governance that are not clearly addressed in the existing statute: (1) The general
23 supremacy of the law over a CID's governing documents,²⁵ and (2) the relative

21. See proposed Civ. Code §§ 4076 ("annual budget report"), 4078 ("annual policy statement"), 4148 ("general notice"), 4153 ("individual notice"), 4160 ("member"), 4170 ("person") *infra*. See also proposed Civ. Code §§ 4065 ("approved by majority of all members"), 4070 ("approved by majority of quorum of members") *infra*.

22. See proposed Civ. Code §§ 4155 ("managing agent"), 4177 ("reserve accounts"), 4178 ("reserve account requirements"), 4180 ("rule change") *infra*.

23. For example, the existing definition of the term "condominium plan" includes detailed procedures that must be followed when creating or amending a condominium plan. Those procedures are not part of the definition and should be located elsewhere. In the proposed law, the procedures would be relocated to an article collecting provisions governing the creation and amendment of condominium plans. See proposed Civ. Code §§ 4290, 4295 *infra*. See also proposed Civ. Code § 5205(g) *infra*.

24. Because of the magnitude and mostly technical character of the proposed law, the Commission adopted a conservative approach in deciding which substantive reforms would be included. If a possible substantive change was found to be significantly controversial, it was not included. Substantive changes that were not included in the proposed law were noted by the Commission for possible future study.

25. The existing statute addresses this issue in a piecemeal fashion. See Civ. Code §§ 1352.5 (governing documents may not contain illegal discriminatory restriction), 1353.7 (governing documents may not require violation of Health & Safety Code § 13132.7), 1357.110 (operating rule must be consistent with

1 authority of different types of governing documents.²⁶ This guidance will help to
2 avoid disputes that might arise if an association's governing documents are
3 inconsistent with the law or with each other.

4 ***Text of Proposed Governing Document Amendment***

5 The proposed law would add a new requirement that an association provide
6 members with the text of a proposed amendment of the governing documents
7 when holding a member election to approve the proposed amendment.²⁷ This will
8 ensure that the members have the information necessary to make an informed
9 decision when voting on a proposed governing document amendment.

10 ***Content of Declaration***

11 Existing law specifies what information must be included in a CID's recorded
12 declaration.²⁸ The declaration may also include any other information that the
13 "original signator of the declaration or the owners consider appropriate."²⁹

14 The proposed law would replace the phrase "original signator of the declaration"
15 with the defined term "declarant."³⁰ This change would permit a successor-in-
16 interest to the original signator to add material to the declaration as that person
17 deems appropriate (using proper procedures for amendment of the declaration).
18 The Commission sees no policy reason to limit that power to the original signator.

19 ***Amendment of Declaration***

20 Existing law provides similar but slightly different procedures for amendment of
21 the declaration, depending on the purpose of the amendment.³¹ The proposed law
22 would harmonize those requirements in a general procedure for amendment of the
23 declaration.³² That procedure would also include two minor improvements: (1) It
24 would expressly recognize that some declarations require that a person other than
25 a member of the association approve an amendment, and (2) it would make clear

law), 1378(a)(3) (architectural standards must be consistent with law). The proposed law would expressly provide that the law is superior to an association's governing documents. See proposed Civ. Code § 4205(a) *infra*.

26. Existing law addresses this issue in a piecemeal fashion. See Civ. Code § 1357.110 (declaration, articles, and bylaws superior to operating rules); Corp. Code § 7151(c) (articles superior to bylaws). The proposed law would expressly declare the relative authority of the most common types of governing documents. See proposed Civ. Code § 4205(b)-(d) *infra*.

27. See proposed Civ. Code § 5115(e) *infra*.

28. See Civ. Code § 1353.

29. See Civ. Code § 1353(b).

30. See proposed Civ. Code § 4250(b) *infra*.

31. See Civ. Code §§ 1355(a) (general procedure), (b) (amendment of declaration that is silent as to whether it can be amended), 1357 (amendment to extend term of declaration with fixed term).

32. See proposed Civ. Code § 4270 *infra*.

1 that a governing document of less dignity than the declaration cannot specify
2 procedures for amendment of the declaration.³³

3 ***Court Authorized Amendment of Declaration***

4 Existing law authorizes the superior court, in specified circumstances, to
5 approve an amendment of a declaration, even if the required member approval was
6 not obtained.³⁴ To make such a decision, the court must find, among other things,
7 that an election was held to approve the amendment and that the election complied
8 with the association's governing documents. The proposed law would also require
9 the court to find that the election was conducted in accordance with the election
10 provisions of the Davis-Stirling Common Interest Development Act and any other
11 applicable law.³⁵

12 ***Amendment or Revocation of Condominium Plan***

13 Existing law specifies a number of persons (unit owners and others with an
14 interest in the condominium property) who must sign and acknowledge a
15 certificate when creating an original condominium plan.³⁶

16 A condominium plan may be amended or revoked by recordation of an
17 instrument executed "by all of the persons" whose signatures are required on the
18 original certificate.³⁷

19 That language is somewhat ambiguous. It is not entirely clear whether an
20 instrument amending or revoking a condominium plan must be signed by the same
21 individuals who signed the original certificate, or by their successors in interest.

22 The proposed law would clarify that the instrument must be executed by those
23 persons who hold the specified interests in the property at the time of the
24 amendment or revocation.³⁸ In other words, if an original signator no longer holds
25 the specified interest in the property, it must be signed by that person's current
26 successor.

27 ***Reversal of Operating Rule Change***

28 Existing law permits the members of an association to call a meeting to vote on
29 whether to reverse a recent change to an operating rule.³⁹ That provision was
30 enacted before detailed election provisions were added to the Davis-Stirling

33. For example, a board-adopted operating rule should not be able to change the procedure for amendment of the declaration, which is the founding document of a CID.

34. See Civ. Code § 1356.

35. See proposed Civ. Code § 4275(c)(2) *infra*.

36. See Civ. Code § 1351(e)(3).

37. See Civ. Code § 1351(e).

38. See proposed Civ. Code § 4295 *infra*.

39. See Civ. Code § 1357.140.

1 Common Interest Development Act.⁴⁰ Consequently, the existing provision refers
2 to election procedures in the Corporations Code, rather than to the new procedures
3 in the Davis-Stirling Common Interest Development Act. The proposed law would
4 modernize the provision, by replacing outdated references to the Corporations
5 Code with references to the equivalent provisions of the Davis-Stirling Common
6 Interest Development Act.⁴¹

7 **Improvements Relating to Property Use, Ownership, and Transfer**

8 ***Right of Access to Separate Interest***

9 Existing law prohibits an association (except as otherwise authorized by law)
10 from denying an owner physical access to the owner's separate interest.⁴² The
11 existing provision also appears to protect a non-owner occupant's physical access
12 to the separate interest occupied by that person. However, the provision could be
13 clearer on that point.

14 The proposed law would revise the provision to unambiguously provide
15 protection for both owners and occupants.⁴³

16 ***Protected Uses of Separate Interest Property***

17 Existing law includes a number of provisions that limit an association's ability
18 to restrict certain specified uses of a separate interest. For example, Civil Code
19 Section 1353.5 protects the right to display the United States flag on separate
20 interest property.

21 The proposed law would collect these provisions together and would add a new
22 provision that cross-refers to other similar protections that exist outside of the
23 Davis-Stirling Common Interest Development Act.⁴⁴ The new provision would
24 provide CID property owners with a more complete understanding of their
25 property use rights.⁴⁵

26 ***Modification of Separate Interest Property***

27 Existing law includes a provision that guarantees the right of an owner in a
28 condominium project to make changes to the owner's separate interest "unit,"

40. See Civ. Code § 1363.03.

41. See proposed Civ. Code § 4365 *infra*.

42. See Civ. Code § 1361.5.

43. See proposed Civ. Code § 4510 *infra*.

44. See proposed Civ. Code § 4700 *infra*.

45. The proposed law would also make minor improvements to the scope of application of one property use provision. See proposed Civ. Code § 4730 *infra*.

1 within specified limitations.⁴⁶ Special rules are provided for a modification
2 necessary to accommodate a disability.⁴⁷

3 The existing provision is limited by its terms to a unit in a condominium project.
4 The Commission finds no good policy reason for that limitation. The proposed law
5 would generalize the provision so that it applies to a separate interest in any type
6 of CID.⁴⁸

7 ***Grant of Exclusive Use of Common Area***

8 With a number of exceptions, existing law requires the approval of members
9 representing at least 67 percent of the association's separate interests before the
10 board may grant an individual member a right of exclusive use of part of the
11 common area.⁴⁹

12 The proposed law would make a number of minor improvements to that
13 provision, as explained below:⁵⁰

- 14 (1) The existing provision only applies to common area that is owned directly
15 by the association as an entity. Thus, it does not apply to common area that
16 is owned by the members as tenants in common (a common arrangement in
17 condominiums and planned unit developments).⁵¹ The Commission found
18 no good policy reason for that limitation. The proposed law would apply the
19 provision to any grant of exclusive use of common area, regardless of how
20 the common area is owned.
- 21 (2) A new exception would be added for a grant that is necessary to
22 accommodate a disability.
- 23 (3) A new exception would be added for a grant that is required by law.
- 24 (4) A new exception would be added for the assignment of a parking space,
25 storage unit, or other amenity, if the declaration expressly provides for its
26 assignment.

27 **Improvements Relating to Board of Directors**

28 ***Board Meeting with Fixed Time and Place***

29 Existing law requires advance notice of a board meeting,⁵² requires that the
30 notice include the agenda for the meeting,⁵³ and generally restricts the board to
31 discussing the topics listed in the agenda.⁵⁴

46. See Civ. Code § 1360.

47. *Id.*

48. See proposed Civ. Code § 4760 *infra*.

49. See Civ. Code § 1363.07.

50. See proposed Civ. Code § 4600 *infra*.

51. See Civ. Code § 1351(f), (k).

52. See Civ. Code § 1363.05(f).

53. *Id.*

1 Under existing law, if the time and place of board meetings is fixed in an
2 association's governing documents, the association is not required to give advance
3 notice of a meeting. This exception made sense when it was enacted, because the
4 only purpose of the notice was to inform members of the meeting time and
5 location.

6 However, after the subsequent enactment of the agenda requirements, the
7 exception became problematic. It could be read to excuse an association from
8 providing an advance agenda for a board meeting, simply by adopting a fixed
9 meeting schedule. This would undermine the policy purpose of the agenda
10 requirements — ensuring that members have advance notice of the business to be
11 conducted at a meeting.

12 The proposed law would delete the existing exception. All associations would be
13 required to provide advance notice of a meeting, including an agenda for the
14 meeting, regardless of whether the time and place of the meeting is fixed in the
15 governing documents.⁵⁵

16 ***Definition of "Board Meeting"***

17 The existing advance notice and open meeting requirements only apply to a
18 "board meeting," as that term is defined in the Davis-Stirling Common Interest
19 Development Act. The current statute defines a "board meeting" as a gathering of
20 a majority of the directors to consider board business (other than matters that may
21 be considered in executive session).⁵⁶

22 The proposed law would make a minor change to the definition of "board
23 meeting." Rather than requiring that a majority of the directors be present, the
24 proposed law would instead require the presence of a number of directors
25 sufficient to establish a quorum.⁵⁷ This would reflect the fact that in some
26 associations the quorum for a board meeting may be more or less than a simple
27 majority. As a matter of policy, the rules governing board meetings should apply
28 to any gathering of the number of directors that is sufficient to conduct board
29 business.

30 ***Posted Notice of Board Meeting***

31 Existing law requires that notice of a board meeting be "posted" in a prominent
32 place in the common area, and delivered by mail to any member who has
33 requested mailed notice.⁵⁸ Some associations cannot comply with the posting
34 requirement because they do not have common area that is appropriate for the

54. See Civ. Code § 1363.05(i).

55. See proposed Civ. Code § 4920 *infra*.

56. See Civ. Code § 1363.05(j).

57. See proposed Civ. Code § 4090 *infra*.

58. See Civ. Code § 1363.05(f).

1 posting of notices. The proposed law would delete the posting requirement and
2 instead require “general delivery”⁵⁹ of board meeting notices.⁶⁰ This would
3 continue to allow posting, but would increase flexibility by providing alternatives
4 to posting (e.g., publication in a newsletter). It would continue a member’s right to
5 receive mailed notices on request.

6 ***Interested Director Disqualification***

7 Existing law provides that an association director is subject to the rules
8 governing self-interested contracting in for-profit corporations.⁶¹

9 The proposed law would continue that provision with two changes. First, it
10 would replace the existing reference to for-profit corporations law with a reference
11 to the equivalent provisions of nonprofit corporations law (most associations are
12 organized as nonprofit corporations).⁶² Second, the proposed law would expressly
13 prohibit a self-interested director from voting on specified types of matters.⁶³ This
14 new provision would be similar in effect to the law requiring that government
15 officials disqualify themselves from making decisions that affect their economic
16 interests,⁶⁴ but it would be expressed in terms that are easier for non-lawyers to
17 understand and apply.

18 **Improvements Relating to Member Elections**

19 ***Scope of Member Election Procedure***

20 Under existing law, the election procedure only applies to specified types of
21 elections.⁶⁵ The proposed law would authorize an association to elect to use the
22 statutory procedure for any type of member election.⁶⁶ This would allow an
23 association to take advantage of standardized procedures, to the extent appropriate
24 to its circumstances.

25 ***Notification of Election Results***

26 Existing law requires that the results of a member election be “publicized” in a
27 “communication directed to all members.”⁶⁷ That ambiguous requirement would
28 be replaced with a requirement that “general notice” of the election results be

59. See proposed Civ. Code § 4045 *infra*.

60. See proposed Civ. Code § 4920 *infra*.

61. See Civ. Code § 1365.6.

62. See proposed Civ. Code § 5350(a) *infra*.

63. See proposed Civ. Code § 5350(b) *infra*.

64. See Gov’t Code § 87100.

65. See Civ. Code § 1363.03(b).

66. A decision to use the statutory procedure in other types of elections would need to be expressed in an operating rule. See proposed Civ. Code § 5100(b) *infra*.

67. See Civ. Code § 1363.03(g).

1 provided.⁶⁸ “General notice” is a defined term, so using it will eliminate any
2 uncertainty as to what is required and will allow an association to use standardized
3 notice procedures.⁶⁹

4 ***Ballot Custody***

5 Existing law requires that the election inspector maintain custody of ballots
6 “until the time allowed by Section 7527 of the Corporations Code for challenging
7 the election has expired...”⁷⁰ That time is nine months after the election.

8 That rule is problematic, because the Davis-Stirling Common Interest
9 Development Act provides a period of 12 months to challenge an election.⁷¹ Thus,
10 the existing law would appear to sanction the destruction of ballots three months
11 before the end of the period in which an election can be challenged.

12 The Commission sees no good policy reason for that rule. Ballots are typically
13 crucial evidence in an election contest and should be retained for as long as a
14 judicial challenge can still be filed. The proposed law would require that the
15 ballots be retained for the full 12-month challenge period provided in the Davis-
16 Stirling Common Interest Development Act.⁷²

17 ***Campaign Communications***

18 Existing law restricts the use of association funds for campaign communications
19 in connection with a pending board election.⁷³ Campaign communications are
20 defined to include any communication that features the name or photograph of a
21 candidate.⁷⁴ That provision is overbroad, because it could prohibit the distribution
22 of routine documents that happen to include the name of a candidate (e.g., meeting
23 minutes).

24 The proposed law would address that problem by adding an exception for
25 communications that are required by law (e.g., meeting minutes).⁷⁵

26 **Improvements Relating to Records and Notices**

27 ***Scope of Record Inspection Right***

28 Existing law provides that members may inspect and copy association records.⁷⁶
29 The scope of that right is prescribed in a provision that defines the term
30 “association records.”⁷⁷

68. See proposed Civ. Code § 5120(b) *infra*.

69. See proposed Civ. Code § 4045 *infra*.

70. See Civ. Code § 1363.03(h).

71. See Civ. Code § 1363.09.

72. See proposed Civ. Code § 5125 *infra*.

73. See Civ. Code § 1363.04.

74. *Id.*

75. See proposed Civ. Code § 5135(b)(2) *infra*.

1 The existing definition of “association records” does not include the governing
2 documents. The Commission believes that the governing documents of an
3 association should be subject to member inspection. The proposed law would add
4 governing documents to the statutory definition of “association records.”⁷⁸

5 The proposed law would also clarify an existing ambiguity, by stating expressly
6 that the term “association records” includes those records defined as “enhanced
7 association records.”⁷⁹

8 ***Annual Reports***

9 Existing law requires that an association distribute specified information to its
10 membership on an annual basis. This information includes:

- 11 (1) A pro forma operating budget that must be delivered from 30 to 90 days
12 before the end of the fiscal year.⁸⁰
- 13 (2) In an association with \$75,000 or more in annual gross income, an
14 accountant’s review of the association’s financial statement must be
15 distributed, within 120 days after the end of the fiscal year.⁸¹
- 16 (3) Numerous other pieces of information that must be included with the pro
17 forma operating budget.⁸²

18 The proposed law would organize that information into three annual reports,
19 based on subject matter: (1) an annual budget report,⁸³ which would include only
20 the budget and related financial disclosures, (2) an annual financial statement
21 review, if required,⁸⁴ and (3) an annual policy statement, which would aggregate
22 all other informational disclosures that an association is required to make each
23 year.⁸⁵

24 Existing law permits an association to send notice of the availability of the
25 annual budget, rather than the budget itself. Members may receive the full

76. See Civ. Code § 1365.2.

77. See Civ. Code § 1365.2(a).

78. See proposed Civ. Code § 5200(a)(11) *infra*.

79. See proposed Civ. Code § 5200(a)(12) *infra*.

80. See Civ. Code § 1365(a).

81. See Civ. Code § 1365(c).

82. See, e.g., Civ. Code §§ 1363.850 (notice of informal dispute resolution process), 1365(d) (assessment collection policy), 1365(e) (summary of insurance coverage), 1365.1 (assessment collection policy), 1365.2.5 (assessment and reserve summary), 1369.490 (notice of alternative dispute resolution requirements), 1378 (architectural review procedure).

83. See proposed Civ. Code § 5300 *infra*.

84. See proposed Civ. Code § 5305 *infra*.

85. See proposed Civ. Code § 5310 *infra*.

document on request, at no cost.⁸⁶ The proposed law would preserve that option, and extend it to the annual policy statement as well.⁸⁷

These changes would locate all annual reporting requirements in one place in the code and would provide greater flexibility on how those materials are distributed. That flexibility should lead to cost savings in many associations.⁸⁸

Standardized Notice Procedures

Existing law includes numerous notice requirements, with inconsistent rules on the manner in which notice must be delivered. The proposed law would provide standardized notice delivery procedures, in order to increase operational efficiency and certainty.⁸⁹ Provisions requiring delivery by certified mail would be left unchanged.⁹⁰

Improvements Relating to Assessments

Assessment Increase

Under existing law, an association may not increase regular assessments unless it has either distributed a pro forma budget in compliance with Civil Code Section 1365(a) or obtained the approval of the members in a member election.⁹¹

In addition, the association must obtain the approval of the members before increasing regular assessments by more than 20% or imposing a special assessment that is more than 5% of the association's budgeted gross expenses for the fiscal year.⁹²

The proposed law would make one minor improvement to those provisions. Existing law requires that the members' approval be obtained in an election conducted pursuant to specified provisions of the Corporations Code. Those provisions have been expressly superseded by the member election provisions in the Davis-Stirling Common Interest Development Act.⁹³ The proposed law would remove the superseded reference to the Corporations Code election procedure.

Assessment Payment Priority

Existing law provides that a member's payment for assessments should be applied first to the assessments owed, before being applied to any collection costs,

86. See Civ. Code § 1365(d).

87. See proposed Civ. Code § 5320 *infra*.

88. The new procedural alternatives provided in the proposed law would be optional. Consequently, the proposed law would not add any new operating costs.

89. See proposed Civ. Code §§ 4035-4050, 5260 *infra*.

90. See, e.g., proposed Civ. Code § 5660 (pre-lien notice) *infra*.

91. See Civ. Code § 1366(a).

92. See Civ. Code § 1366(b).

93. See Civ. Code § 1363.03(n).

1 interest, or penalties.⁹⁴ This is important, because the amount of principal owed
2 determines whether nonjudicial foreclosure can be used to collect the delinquent
3 amount.⁹⁵

4 Under the existing provision, it is not entirely clear whether the payment priority
5 rule is conditioned on the association having provided the member with a written
6 notice of delinquency.

7 The proposed law would make clear that the payment priority rule applies in all
8 cases, regardless of whether or when the member has received a notice of
9 delinquency.⁹⁶

10 ***Lien Release***

11 Under existing law, if it is discovered through alternative dispute resolution that
12 the association has recorded an assessment lien in error, the association is required
13 to release the lien and reverse all costs, fees, and interest associated with the
14 error.⁹⁷

15 There is no good policy reason to limit that rule to situations in which the error
16 is discovered through alternative dispute resolution. The proposed law would
17 continue the rule, but expand its application so that it applies whenever the
18 association has recorded an assessment lien in error, without regard for how the
19 error is discovered.⁹⁸

20 **Improvements Relating to Enforcement and Dispute Resolution**

21 ***Schedule of Monetary Penalties***

22 If an association policy authorizes the imposition of a monetary penalty for a
23 violation of the governing documents, existing law requires that the association
24 adopt a schedule of monetary penalties and deliver it to the members.⁹⁹ If the
25 penalty schedule is later amended, the amended penalty schedule must be
26 delivered to the members.¹⁰⁰

27 The proposed law would require that the schedule be included in the policy
28 statement that is delivered to the members annually.¹⁰¹ This would eliminate the
29 need for a separate mailing and would remind members of the penalties for
30 governing document violations on an annual basis.¹⁰²

94. See Civ. Code § 1367.1(b).

95. See Civ. Code § 1367.4(b).

96. See proposed Civ. Code § 5655 *infra*.

97. See Civ. Code § 1367.5.

98. See proposed Civ. Code § 5685 *infra*.

99. See Civ. Code § 1363(g).

100. *Id.*

101. See proposed Civ. Code § 5850 *infra*.

102. See proposed Civ. Code § 5740 *infra*.

1 The proposed law would also make clear that the penalty imposed for a violation
2 of the governing documents is limited to the penalty in effect at the time of the
3 violation. This prevents an association from increasing a penalty amount without
4 prior notice to an offender.¹⁰³

5 ***Notice and Opportunity to be Heard***

6 Before disciplining a member for a violation of the governing documents, the
7 association must provide the member with notice of the alleged violation and an
8 opportunity to be heard by the board.¹⁰⁴

9 The proposed law would broaden that notice and hearing requirement to also
10 apply when an association attempts to impose a monetary charge as a means of
11 reimbursing the association for costs incurred by the association in the repair of
12 damage to common area and facilities caused by a member or the member's guest
13 or tenant.¹⁰⁵ In both cases, a property owner should have a chance to know the
14 nature of the allegation and to dispute it.

15 ***Alternative Dispute Resolution***

16 Existing law requires that alternative dispute resolution ("ADR") be offered
17 before a civil action is filed by or against an association to enforce a provision of
18 the governing documents, the Davis-Stirling Common Interest Development Act,
19 or a provision of the Corporations Code.¹⁰⁶

20 The non-filing party is not required to accept the offer. However, in an action in
21 which fees and costs may be awarded, the court may consider whether the refusal
22 of ADR was reasonable, when determining the amount of the award.¹⁰⁷

23 Under existing law, that rule only applies in an action to enforce the
24 association's governing documents. The proposed law would broaden the rule, to
25 apply in any action in which fees and costs may be awarded.¹⁰⁸ That would further
26 the policy purpose of the section, to encourage participation in ADR where it is
27 reasonable to do so.

28 **Commercial and Industrial Developments**

29 Under existing law, an entirely commercial or industrial CID is exempt from
30 specified provisions of the Davis-Stirling Common Interest Development Act, on
31 the grounds that those provisions are appropriate in residential developments but

103. See proposed Civ. Code § 5850 *infra*.

104. See Civ. Code § 1363(h).

105. See proposed Civ. Code § 5855(a) *infra*.

106. See Civ. Code §§ 1369.510-1369.590.

107. See Civ. Code § 1369.580.

108. See proposed Civ. Code § 5960 *infra*.

1 are not needed in entirely commercial or industrial developments, where they add
2 unnecessary costs and burdens.¹⁰⁹

3 The proposed law would continue the existing exemptions,¹¹⁰ with two changes:

4 (1) Entirely commercial and industrial CIDs would be exempted from the
5 member election provisions of the proposed law.¹¹¹ These business
6 developments would instead conduct elections under the election procedures
7 provided in the Corporations Code.¹¹²

8 (2) Existing law exempts commercial and industrial CIDs from certain
9 assessment setting provisions, including a special rule to be used in
10 emergencies.¹¹³ The exemption of commercial and industrial CIDs from the
11 emergency provision does not make policy sense¹¹⁴ and was probably
12 inadvertent. The proposed law would not exempt commercial CIDs from the
13 special emergency provision.¹¹⁵

14 TRANSITIONAL PROVISIONS

15 Because the proposed law would comprehensively reorganize the Davis-Stirling
16 Common Interest Development Act, all of the existing code section numbers
17 would be changed. Each provision continued in the proposed law would have a
18 new number.

19 This will impose some transitional costs on those who are already familiar with
20 the existing numbering scheme. It will also require that court decisions and other
21 documents referencing the former section numbers be correlated to the new
22 numbers. These transitional costs will fall most heavily on CID professionals, such
23 as property managers and attorneys, who have expertise with the current statute.
24 Most homeowners are not experts in the Davis-Stirling Common Interest
25 Development Act and so will not be directly affected by these transitional costs.¹¹⁶

109. Civ. Code § 1373. The Commission is currently conducting a separate study of the application of the Davis-Stirling Common Interest Development Act to commercial and industrial CIDs. The changes proposed in this recommendation are not intended to affect or supersede any conclusions that might eventually be reached in that separate study.

110. See proposed Civ. Code § 4202(a)(6) *infra*.

111. See proposed Civ. Code § 4202(a)(3) *infra*.

112. See Corp. Code § 7510 *et seq.*

113. See Civ. Code § 1373(a)(6).

114. The emergency exception provides necessary flexibility to address unforeseen circumstances that should be available to all CIDs, regardless of type. See proposed Civ. Code § 5610 *infra*.

115. See proposed Civ. Code § 4202 *infra*.

116. As noted earlier, half of all CIDs in California have 25 units or fewer units; two-thirds have 50 units or fewer. See *supra* note 5. Homeowners in these small associations typically operate without professional assistance. These homeowners have little investment in the current numbering scheme. They would benefit from a statute that is well-organized and easy to use.

1 This recommendation includes a number of features that would help to ease the
2 transition to the reorganized statute. They are discussed below.

3 **Deferred Operation**

4 The proposed law would be given a one-year deferred operation date. That
5 would give affected persons and organizations time to adjust to the new
6 organization of the law.

7 **Prospective Application**

8 The proposed law would expressly provide that any substantive changes in the
9 new law would not retroactively invalidate actions and documents that were
10 completed prior to the operation of the new law and that were proper under the
11 former law.¹¹⁷

12 **Simplified Cross-Reference Updating**

13 Some governing documents include references to provisions of the Davis-
14 Stirling Common Interest Development Act. The proposed law would provide a
15 simplified procedure that an association could use to update such references, to
16 reflect the new section numbers.¹¹⁸

17 **Commission Comments**

18 In preparing a recommendation, the Commission drafts an explanatory
19 “Comment” for every section that is added, amended, or repealed.¹¹⁹ A Comment
20 indicates the derivation of a section and often explains its purpose, its relation to
21 other law, and potential issues concerning its meaning or application.

22 These Comments will help readers to determine the relationship between a new
23 provision of the proposed law, and the provision of former law that it continues.
24 Each Comment will also identify any changes from former law and expressly state
25 whether the change is technical or substantive.

26 On completion of a final recommendation, the full recommendation, including
27 the proposed legislation and the Comments, will be presented to the Legislature
28 and the Governor. If legislation is introduced to effectuate the proposed law, the
29 full recommendation will be provided to each member of every policy committee
30 that reviews the legislation.

31 Commission materials that have been placed before the Legislature are
32 considered evidence of legislative intent,¹²⁰ and are entitled to great weight in

117. See proposed Civ. Code § 4010 *infra*.

118. See proposed Civ. Code § 4235 *infra*.

119. The Comments follow each section of the proposed legislation *infra*.

120. See, e.g., *Fair v. Bakhtiari*, 40 Cal. 4th 189, 195, 147 P.3d 653, 657, 51 Cal. Rptr. 3d 871, 875 (2006) (“The Commission’s official comments are deemed to express the Legislature’s intent.”); *People v. Williams*, 16 Cal. 3d 663, 667-68, 547 P.2d 1000, 128 Cal. Rptr. 888 (1976) (“The official comments of the

1 construing statutes.¹²¹ The materials are a key interpretive aid for practitioners as
 2 well as courts,¹²² and courts may judicially notice and rely on them.¹²³ Courts at all
 3 levels of the state¹²⁴ and federal¹²⁵ judicial systems use Commission materials to
 4 construe statutes enacted on Commission recommendation.¹²⁶

California Law Revision Commission on the various sections of the Evidence Code are declarative of the intent not only of the draft[ers] of the code but also of the legislators who subsequently enacted it.”).

121. See, e.g., *Dep’t of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.*, 40 Cal. 4th 1, 12-13 n.9, 145 P.3d 462, 469 n.9, 50 Cal. Rptr. 3d 585, 593 n.9 (2006) (Commission’s official comments are persuasive evidence of Legislature’s intent); *Hale v. S. Cal. IPA Med. Group, Inc.*, 86 Cal. App. 4th 919, 927, 103 Cal. Rptr. 2d 773, 778 (2001):

In an effort to discern legislative intent, an appellate court is entitled to take judicial notice of the various legislative materials, including committee reports, underlying the enactment of a statute. (*Kern v. County of Imperial* (1990) 226 Cal.App.3d 391, 400, fn. 8, 276 Cal.Rptr. 524; *Coopers & Lybrand v. Superior Court* (1989) 212 Cal.App.3d 524, 535, fn. 7, 260 Cal. Rptr. 713.) In particular, reports and interpretive opinions of the Law Revision Commission are entitled to great weight. (*Schmidt v. Southern Cal. Rapid Transit Dist.* (1993) 14 Cal.App.4th 23, 30, fn. 10, 17 Cal.Rptr.2d 340.)

122. *Cf.* 7 B. Witkin, *Summary of California Law Constitutional Law* § 123, at 230 (10th ed. 2005) (Commission reports as aid to construction); Gaylord, *An Approach to Statutory Construction*, 5 Sw. U. L. Rev. 349, 384 (1973).

123. See, e.g., *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.*, 133 Cal. App. 4th 26, 34 Cal. Rptr. 3d 520 (2005) (providing overview of materials that may be judicially noticed in determining legislative intent); *Hale*, 86 Cal. App. 4th at 927; *Barkley v. City of Blue Lake*, 18 Cal. App. 4th 1745, 1751 n.3, 23 Cal. Rptr. 2d 315, 318-19 n.3 (1993).

124. See, e.g., *Sullivan v. Delta Air Lines, Inc.*, 15 Cal. 4th 288, 298, 935 P.2d 781, 63 Cal. Rptr. 2d 74 (1997) (California Supreme Court); *Admin. Mgmt. Services, Inc. v. Fid. & Deposit Co. of Md.*, 129 Cal. App. 3d 484, 488, 181 Cal. Rptr. 141 (1982) (court of appeal); *Rossetto v. Barross*, 90 Cal. App. 4th Supp. 1, 5-6, 110 Cal. Rptr. 2d 255 (2001) (appellate division of superior court).

125. See, e.g., *California v. Green*, 399 U.S. 149, 154 n.3 (1970) (United States Supreme Court); *S. Cal. Bank v. Zimmerman* (*In re Hilde*), 120 F.3d 950, 953 (9th Cir. 1997) (federal court of appeals); *Williams v. Townsend*, 283 F. Supp. 580, 582 (C.D. Cal. 1968) (federal district court); *Ford Consumer Fin. Co. v. McDonell* (*In re McDonell*), 204 B.R. 976, 978-79 (B.A.P. 9th Cir. 1996) (bankruptcy appellate panel); *In re Garrido*, 43 B.R. 289, 292-93 (Bankr. S.D. Cal. 1984) (bankruptcy court).

126. See, e.g., *Jevne v. Superior Court*, 35 Cal. 4th 935, 947, 111 P.3d 954, 962, 28 Cal. Rptr. 3d 685, 694-95 (2005) (Commission report entitled to substantial weight in construing statute); *Collection Bureau of San Jose v. Rumsey*, 24 Cal. 4th 301, 308 & n.6, 6 P.3d 713, 718 & n.6, 99 Cal. Rptr. 2d 792, 797 & n.6 (2000) (Comments to reenacted statute reiterate the clear understanding and intent of original enactment); *Brian W. v. Superior Court*, 20 Cal. 3d 618, 623, 574 P.2d 788, 791, 143 Cal. Rptr. 717, 720 (1978) (Comments persuasive evidence of Legislature’s intent); *Volkswagen Pac., Inc. v. City of Los Angeles*, 7 Cal. 3d 48, 61-63, 496 P.2d 1237, 1247-48, 101 Cal. Rptr. 869, 879-80 (1972) (Comments evidence clear legislative intent of law); *Van Arsdale v. Hollinger*, 68 Cal. 2d 245, 249-50, 437 P.2d 508, 511, 66 Cal. Rptr. 20, 23 (1968) (Comments entitled to substantial weight), *overruled on other grounds*, *Privette v. Superior Court*, 5 Cal. 4th 689, 696, 854 P.2d 721, 21 Cal. Rptr. 2d 72 (1993); *County of Los Angeles v. Superior Court*, 62 Cal. 2d 839, 843-44, 402 P.2d 868, 870-71, 44 Cal. Rptr. 796, 798-99 (1965) (statutes reflect policy recommended by Commission).

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PROPOSED RECODIFICATION OF DAVIS-STIRLING COMMON INTEREST DEVELOPMENT ACT

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PROPOSED LEGISLATION

Civ. Code §§ 1350-1378 (repealed). Davis-Stirling Common Interest Development Act

SECTION 1. Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code is repealed.

Civ. Code §§ 4000-6150 (added). Davis-Stirling Common Interest Development Act

SEC. 2. Part 5 (commencing with Section 4000) is added to Division 4 of the Civil Code, to read:

PART 5. COMMON INTEREST DEVELOPMENTS

CHAPTER 1. GENERAL PROVISIONS

Article 1. Preliminary Provisions

§ 4000. Short title

4000. This part shall be known and may be cited as the Davis-Stirling Common Interest Development Act. In a provision of this part, the part may be referred to as the act.

Comment. The first sentence of Section 4000 continues former Section 1350 without change. The second sentence is added for drafting convenience.

§ 4005. Effect of headings

4005. Division, part, title, chapter, article, and section headings do not in any manner affect the scope, meaning, or intent of this act.

Comment. Section 4005 continues former Section 1350.5 without change, except as indicated below.

The following nonsubstantive changes were made:

- “Article” was added to the list of headings.
- The last word of the sentence was replaced with “act.”

Section 4005 is a standard provision found in many codes. See, e.g., Evid. Code § 5; Fam. Code § 5; Prob. Code § 4.

§ 4010. Application of act

4010. Nothing in the act that added this part shall be construed to invalidate a document prepared or action taken before January 1, 2014, if the document or action was proper under the law governing common interest developments at the time that the document was prepared or the action was taken.

Comment. Section 4010 is new. It makes clear that any changes to former law made by enactment of this act shall not be construed to retroactively invalidate documents prepared or actions taken prior to the operative date of the act.

See also Section 4100 (“common interest development”).

1 **§ 4020. Construction of zoning ordinance**

2 4020. Unless a contrary intent is clearly expressed, a local zoning ordinance is
3 construed to treat like structures, lots, parcels, areas, or spaces in like manner
4 regardless of the form of the common interest development.

5 **Comment.** Section 4020 continues former Section 1372 without change, except as indicated
6 below.

7 The following nonsubstantive change was made:

- 8 • A list of all of the types of common interest developments was replaced with general
9 language.

10 See also Section 4100 (“common interest development”).

11 **§ 4035. Delivered to an association**

12 4035. (a) If a provision of this act requires that a document be delivered to an
13 association, the document shall be delivered to the person designated in the annual
14 policy statement, prepared pursuant to Section 5310, to receive documents on
15 behalf of the association. If no person has been designated to receive documents,
16 the document shall be delivered to the president or secretary of the association.

17 (b) A document delivered pursuant to this section may be delivered by any of
18 the following methods:

19 (1) First-class mail, postage prepaid, registered or certified mail, express mail, or
20 overnight delivery by an express service carrier.

21 (2) By e-mail, facsimile, or other electronic means, if the association has
22 assented to that method of delivery.

23 (3) By personal delivery, if the association has assented to that method of
24 delivery. If the association accepts a document by personal delivery it shall
25 provide a written receipt acknowledging delivery of the document.

26 **Comment.** Section 4035 is new. It provides a standard rule for delivery of a document to the
27 association.

28 See also Section 4170 (“person”).

29 **§ 4040. Individual notice**

30 4040. (a) If a provision of this act requires that an association deliver a
31 document by “individual delivery” or “individual notice,” the document shall be
32 delivered by one of the following methods:

33 (1) First-class mail, postage prepaid, registered or certified mail, express mail, or
34 overnight delivery by an express service carrier. The document shall be addressed
35 to the recipient at the address last shown on the books of the association.

36 (2) E-mail, facsimile, or other electronic means, if the recipient has consented, in
37 writing, to that method of delivery. The consent may be revoked, in writing, by the
38 recipient.

39 (b) Upon receipt of a request by a member, pursuant to Section 5260, identifying
40 a secondary address for delivery of notices of the following types, the association
41 shall deliver an additional copy of those notices to the secondary address identified
42 in the request:

1 (1) The documents to be delivered to the member pursuant to Article 7
2 (commencing with Section 5300) of Chapter 6.

3 (2) The documents to be delivered to the member pursuant to Article 2
4 (commencing with Section 5650) of Chapter 8, and Section 5710.

5 (c) For the purposes of this section, an unrecorded provision of the governing
6 documents providing for a particular method of delivery does not constitute
7 agreement by a member to that method of delivery.

8 **Comment.** Section 4040 is new. It specifies acceptable methods for delivery of a notice to an
9 individual member, as distinguished from a notice that is to be delivered to every member. See
10 Section 4045 (general notice). The methods listed in subdivision (a) are drawn from former
11 Section 1350.7(b)(2)-(3).

12 Subdivision (b) continues part of the substance of former Sections 1365.1(c) and 1367.1(k).
13 See also Section 5260.

14 Subdivision (c) continues former Section 1350.7(d). It precludes use of electronic delivery
15 methods when the recipient has not consented to use of those methods or has withdrawn such
16 consent.

17 See also Sections 4080 (“association”), 4150 (“governing documents”), 4160 (“member”).

18 **§ 4045. General notice**

19 4045. (a) If a provision of this act requires “general delivery” or “general
20 notice,” the document shall be provided by one or more of the following methods:

21 (1) Any method provided for delivery of an individual notice pursuant to Section
22 4040.

23 (2) Inclusion in a billing statement, newsletter, or other document that is
24 delivered by one of the methods provided in this section.

25 (3) Posting the printed document in a prominent location that is accessible to all
26 members, if the location has been designated for the posting of general notices by
27 the association in the annual policy statement, prepared pursuant to Section 5310.

28 (4) If the association broadcasts television programming for the purpose of
29 distributing information on association business to its members, by inclusion in the
30 programming.

31 (b) Notwithstanding subdivision (a), if a member requests to receive general
32 notices by individual delivery, all general notices to that member, given under this
33 section, shall be delivered pursuant to Section 4040. The option provided in this
34 subdivision shall be described in the annual policy statement, prepared pursuant to
35 Section 5310.

36 **Comment.** Section 4045 is new. It specifies acceptable methods for delivery of a notice to the
37 membership generally, as distinguished from a notice that is to be delivered to a specific member.
38 See Section 4040 (individual notice). Nothing in this section prevents an association from using
39 supplemental notice methods, such as posting on an Internet website, so long as a method
40 authorized by this section is also used.

41 Subdivision (b) reserves the right of any member, on request, to receive general notices by the
42 delivery methods provided for delivery of an individual notice. Thus, in an association that posts
43 general notices on a notice board in a prominent location pursuant to subdivision (a)(3),
44 individual members would still have the right, on request, to receive those notices by mail.

45 See also Sections 4080 (“association”), 4160 (“member”).

§ 4050. Time and proof of delivery

4050. (a) This section governs the delivery of a document pursuant to this act.

(b) If a document is delivered by mail, delivery is deemed to be complete on deposit into the United States mail.

(c) If a document is delivered by electronic means, delivery is complete at the time of transmission.

Comment. Section 4050 is new. Subdivision (b) generalizes the second sentence of former Section 1350.7(b)(2).

Subdivision (c) generalizes the second sentence of former Section 1350.7(b)(3).

§ 4065. Approved by majority of all members

4065. If a provision of this act requires that an action be approved by a majority of all members, the action shall be approved or ratified by an affirmative vote of a majority of the votes entitled to be cast.

Comment. Section 4065 is new. It is added for drafting convenience. This section only governs an election conducted pursuant to a provision of this act (i.e., the Davis-Stirling Common Interest Development Act). An election that is not required by this act would be governed by the association's governing documents.

See also Section 4160 (“member”).

§ 4070. Approved by majority of quorum of members

4070. If a provision of this act requires that an action be approved by a majority of a quorum of the members, the action shall be approved or ratified by an affirmative vote of a majority of the votes represented and voting at a duly held meeting at which a quorum is present, which affirmative votes also constitute a majority of the required quorum.

Comment. Section 4070 is new. It is added for drafting convenience. This section only governs an election conducted pursuant to a provision of this act (i.e., the Davis-Stirling Common Interest Development Act). An election that is not required by this act would be governed by the association's governing documents.

See also Section 4160 (“member”).

Article 2. Definitions

§ 4075. Application of definitions

4075. The definitions in this article govern the construction of this act.

Comment. Section 4075 continues the substance of the introductory clause of former Section 1351.

§ 4076. “Annual Budget Report”

4076. “Annual budget report” means the report described in Section 5300.

Comment. Section 4076 is new. It is added for drafting convenience.

§ 4078. “Annual Policy Statement”

4078. “Annual policy statement” means the statement described in Section 5310.

1 **Comment.** Section 4078 is new. It is added for drafting convenience.

2 **§ 4080. “Association”**

3 4080. “Association” means a nonprofit corporation or unincorporated
4 association created for the purpose of managing a common interest development.

5 **Comment.** Section 4080 continues former Section 1351(a) without change.

6 See also Section 4100 (“common interest development”).

7 **§ 4085. “Board”**

8 4085. “Board” means the board of directors of the association.

9 **Comment.** Section 4085 is new.

10 See also Section 4080 (“association”).

11 **§ 4090. “Board meeting”**

12 4090. “Board meeting” means any congregation at the same time and place, of a
13 sufficient number of directors to establish a quorum of the board, to hear, discuss,
14 or deliberate upon any item of business scheduled to be heard by the board, except
15 those matters that may be discussed in executive session.

16 **Comment.** Section 4090 continues former Section 1363.05(j) without change, except as
17 indicated below.

18 The following substantive change was made:

- 19 • The number of directors required to establish a board meeting was changed from a
20 majority of the members to a number constituting a quorum.

21 The following nonsubstantive changes were made:

- 22 • The word “meeting” was replaced with “board meeting,” to distinguish between a
23 board meeting and a member meeting. See Section 4090 (“board meeting”).
24 • The words “board member” were replaced with “director.” See Section 4140
25 (“director”).

26 See also Section 4085 (“board”).

27 **§ 4095. “Common area”**

28 4095. (a) “Common area” means the entire common interest development
29 except the separate interests therein. The estate in the common area may be a fee,
30 a life estate, an estate for years, or any combination of the foregoing.

31 (b) Notwithstanding subdivision (a), in a planned development described in
32 subdivision (b) of Section 4175, the common area may consist of mutual or
33 reciprocal easement rights appurtenant to the separate interests.

34 **Comment.** Subdivision (a) of Section 4095 continues the first sentence of former Section
35 1351(b) without change.

36 Subdivision (b) continues the substance of the third sentence of former Section 1351(b), but
37 restates it for clarity.

38 See also Sections 4100 (“common interest development”), 4175 (“planned development”),
39 4185 (“separate interest”).

1 **§ 4100. “Common interest development”**

2 4100. “Common interest development” means any of the following:

- 3 (a) A community apartment project.
4 (b) A condominium project.
5 (c) A planned development.
6 (d) A stock cooperative.

7 **Comment.** Section 4100 continues former Section 1351(c) without change.

8 See also Sections 4105 (“community apartment project”), 4125 (“condominium project”), 4175
9 (“planned development”), 4190 (“stock cooperative”).

10 **§ 4105. “Community apartment project”**

11 4105. “Community apartment project” means a development in which an
12 undivided interest in land is coupled with the right of exclusive occupancy of any
13 apartment located thereon.

14 **Comment.** Section 4105 continues former Section 1351(d) without change.

15 **§ 4110. “Community service organization or similar entity”**

16 4110. (a) “Community service organization or similar entity” means a nonprofit
17 entity, other than an association, that is organized to provide services to residents
18 of the common interest development or to the public in addition to the residents, to
19 the extent community common area or facilities are available to the public.

20 (b) “Community service organization or similar entity” does not include an
21 entity that has been organized solely to raise moneys and contribute to other
22 nonprofit organizations that are qualified as tax exempt under Section 501(c)(3) of
23 the Internal Revenue Code and that provide housing or housing assistance.

24 **Comment.** Section 4110 continues former Section 1368(c)(3) without change, except as
25 indicated below.

26 The following nonsubstantive changes were made:

- 27 • It was divided into subdivisions.
28 • The words “common areas” were singularized.

29 See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest
30 development”).

31 **§ 4120. “Condominium plan”**

32 4120. “Condominium plan” means a plan described in Section 4285.

33 **Comment.** Section 4120 is new. It is added for drafting convenience.

34 **§ 4125. “Condominium project”**

35 4125. (a) A “condominium project” means a real property development
36 consisting of condominiums.

37 (b) A condominium consists of an undivided interest in common in a portion of
38 real property coupled with a separate interest in space called a unit, the boundaries
39 of which are described on a recorded final map, parcel map, or condominium plan
40 in sufficient detail to locate all boundaries thereof. The area within these

1 boundaries may be filled with air, earth, water, or fixtures, or any combination
2 thereof, and need not be physically attached to land except by easements for
3 access and, if necessary, support. The description of the unit may refer to (1)
4 boundaries described in the recorded final map, parcel map, or condominium plan,
5 (2) physical boundaries, either in existence, or to be constructed, such as walls,
6 floors, and ceilings of a structure or any portion thereof, (3) an entire structure
7 containing one or more units, or (4) any combination thereof.

8 (c) The portion or portions of the real property held in undivided interest may be
9 all of the real property, except for the separate interests, or may include a
10 particular three-dimensional portion thereof, the boundaries of which are described
11 on a recorded final map, parcel map, or condominium plan. The area within these
12 boundaries may be filled with air, earth, water, or fixtures, or any combination
13 thereof, and need not be physically attached to land except by easements for
14 access and, if necessary, support.

15 (d) An individual condominium within a condominium project may include, in
16 addition, a separate interest in other portions of the real property.

17 **Comment.** Section 4125 continues former Section 1351(f), without change, except as indicated
18 below.

19 The following nonsubstantive changes were made:

- 20 • The section was organized into subdivisions for ease of reference.
- 21 • In subdivision (a), the word “development” was replaced with “real property
22 development.”
- 23 • Subdivisions (b) and (c) make clear that the contents of the area within the boundaries
24 of a condominium may include “fixtures.”

25 See also Sections 4120 (“condominium plan”), 4185 (“separate interest”).

26 § 4130. “Declarant”

27 4130. “Declarant” means the person or group of persons designated in the
28 declaration as declarant, or if no declarant is designated, the person or group of
29 persons who sign the original declaration or who succeed to special rights,
30 preferences, or privileges designated in the declaration as belonging to the signator
31 of the original declaration.

32 **Comment.** Section 4130 continues former Section 1351(g) without change.

33 See also Sections 4135 (“declaration”), 4170 (“person”).

34 § 4135. “Declaration”

35 4135. “Declaration” means the document, however denominated, that contains
36 the information required by Sections 4250 and 4255.

37 **Comment.** Section 4135 continues former Section 1351(h) without change, except as indicated
38 below.

39 The following nonsubstantive changes were made:

- 40 • The word “which” was replaced with “that.”
- 41 • The cross-reference was updated to reflect the new location of the referenced provision.

1 **§ 4140. “Director”**

2 4140. “Director” means a natural person who serves on the board.

3 **Comment.** Section 4140 is new. It is added for drafting convenience.

4 See also Section 4085 (“board”).

5 **§ 4145. “Exclusive use common area”**

6 4145. (a) “Exclusive use common area” means a portion of the common area
7 designated by the declaration for the exclusive use of one or more, but fewer than
8 all, of the owners of the separate interests and which is or will be appurtenant to
9 the separate interest or interests.

10 (b) Unless the declaration otherwise provides, any shutters, awnings, window
11 boxes, doorsteps, stoops, porches, balconies, patios, exterior doors, doorframes,
12 and hardware incident thereto, screens and windows or other fixtures designed to
13 serve a single separate interest, but located outside the boundaries of the separate
14 interest, are exclusive use common area allocated exclusively to that separate
15 interest.

16 (c) Notwithstanding the provisions of the declaration, internal and external
17 telephone wiring designed to serve a single separate interest, but located outside
18 the boundaries of the separate interest, are exclusive use common area allocated
19 exclusively to that separate interest.

20 **Comment.** Section 4145 continues former Section 1351(i) without change, except as indicated
21 below.

22 The following nonsubstantive change was made:

- 23 • The words “common areas” were singularized.

24 See also Sections 4095 (“common area”), 4135 (“declaration”), 4185 (“separate interest”).

25 **§ 4148. “General notice”**

26 4148. “General notice” means the delivery of a document pursuant to Section
27 4045.

28 **Comment.** Section 4148 is new. It is added for drafting convenience.

29 **§ 4150. “Governing documents”**

30 4150. “Governing documents” means the declaration and any other documents,
31 such as bylaws, operating rules, articles of incorporation, or articles of association,
32 which govern the operation of the common interest development or association.

33 **Comment.** Section 4150 continues former Section 1351(j) without change, except as indicated
34 below.

35 The following nonsubstantive change was made:

- 36 • The superfluous words “of the association” have not been continued.

37 See also Sections 4080 (“association”), 4100 (“common interest development”), 4135
38 (“declaration”).

1 **§ 4153. “Individual notice”**

2 4153. “Individual notice” means the delivery of a document pursuant to Section
3 4040.

4 **Comment.** Section 4153 is new. It is added for drafting convenience.

5 **§ 4155. “Managing agent”**

6 4155. (a) A “managing agent” is a person who, for compensation or in
7 expectation of compensation, exercises control over the assets of a common
8 interest development.

9 (b) A “managing agent” does not include any of the following:

10 (1) A regulated financial institution operating within the normal course of its
11 regulated business practice.

12 (2) An attorney at law acting within the scope of the attorney’s license.

13 **Comment.** Section 4155 continues former Section 1363.1(b) without change, except as
14 indicated below.

15 The following substantive change was made:

- 16 • The definition was generalized so that it applies to the entire act.

17 The following nonsubstantive changes were made:

- 18 • The words “or entity” was not continued. See Section 4170 (“person”).
19 • An exception for a full-time employee of the association was not continued in the
20 generalized definition. That exception was continued without change in Section 5385.

21 See also Sections 4080 (“association”), 4100 (“common interest development”).

22 **§ 4160. “Member”**

23 4160. “Member” means an owner of a separate interest.

24 **Comment.** Section 4160 is new. It is added for drafting convenience.

25 See also Section 4185 (“separate interest”).

26 **§ 4170. “Person”**

27 4170. “Person” means a natural person, corporation, government or
28 governmental subdivision or agency, business trust, estate, trust, partnership,
29 limited liability company, association, or other entity.

30 **Comment.** Section 4170 is new. It is added for drafting convenience.

31 **§ 4175. “Planned development”**

32 4175. “Planned development” means a real property development (other than a
33 community apartment project, a condominium project, or a stock cooperative)
34 having either or both of the following features:

35 (a) Common area that is owned either by an association or in common by the
36 owners of the separate interests who possess appurtenant rights to the beneficial
37 use and enjoyment of the common area.

38 (b) Common area and an association that maintains the common area with the
39 power to levy assessments that may become a lien upon the separate interests in
40 accordance with Article 2 (commencing with Section 5650) of Chapter 8.

1 **Comment.** Section 4175 continues the substance of former Section 1351(k), except as
2 indicated below.

3 The following nonsubstantive changes were made:

- 4 • In the introductory clause, the word “development” was replaced with “real property
5 development.”
- 6 • Subdivision (a) was restated for clarity.
- 7 • Subdivision (b) was restated for clarity and to update a cross-reference.

8 See also Sections 4080 (“association”), 4095 (“common area”), 4105 (“community apartment
9 project”), 4125 (“condominium project”), 4185 (“separate interest”), 4190 (“stock cooperative”).

10 **§ 4177. “Reserve accounts”**

11 4177. “Reserve accounts” means both of the following:

12 (a) Moneys that the board has identified for use to defray the future repair or
13 replacement of, or additions to, those major components that the association is
14 obligated to maintain.

15 (b) The funds received, and not yet expended or disposed of, from either a
16 compensatory damage award or settlement to an association from any person for
17 injuries to property, real or personal, arising from any construction or design
18 defects. These funds shall be separately itemized from funds described in
19 subdivision (a).

20 **Comment.** Section 4177 continues former Section 1365.5(f) without change, except as
21 indicated below.

22 The following substantive change was made:

- 23 • The definition was generalized so that it applies to the entire act.

24 The following nonsubstantive changes were made:

- 25 • A cross-reference was updated to reflect the new location of the referenced provisions.
- 26 • The words “association’s board of directors” were replaced with “board.” See Section
27 4085 (“board”).
- 28 • The words “or entity” were not continued. See Section 4170 (“person”).

29 See also Sections 4080 (“association”), 4085 (“board”).

30 **§ 4178. “Reserve account requirements”**

31 4178. “Reserve account requirements” means the estimated funds that the board
32 has determined are required to be available at a specified point in time to repair,
33 replace, or restore those major components that the association is obligated to
34 maintain.

35 **Comment.** Section 4178 continues former Section 1365.5(g) without change, except as
36 indicated below.

37 The following substantive change was made:

- 38 • The definition was generalized so that it applies to the entire act.

39 The following nonsubstantive change was made:

- 40 • The words “association’s board of directors” were replaced with “board.” See Section
41 4085 (“board”).

42 See also Section 4080 (“association”).

1 **§ 4180. “Rule change”**

2 4180. “Rule change” means the adoption, amendment, or repeal of an operating
3 rule by the board.

4 **Comment.** Section 4180 continues former Section 1357.100(b) without change, except as
5 indicated below.

6 The following substantive change was made:

- 7 • The definition was generalized so that it applies to the entire act.

8 The following nonsubstantive change was made:

- 9 • The words “board of directors of the association” were replaced with “board.” See
10 Section 4085 (“board”).

11 **§ 4185. “Separate interest”**

12 4185. (a) “Separate interest” has the following meanings:

13 (1) In a community apartment project, “separate interest” means the exclusive
14 right to occupy an apartment, as specified in Section 4105.

15 (2) In a condominium project, “separate interest” means a separately owned
16 unit, as specified in Section 4125.

17 (3) In a planned development, “separate interest” means a separately owned lot,
18 parcel, area, or space.

19 (4) In a stock cooperative, “separate interest” means the exclusive right to
20 occupy a portion of the real property, as specified in Section 4190.

21 (b) Unless the declaration or condominium plan, if any exists, otherwise
22 provides, if walls, floors, or ceilings are designated as boundaries of a separate
23 interest, the interior surfaces of the perimeter walls, floors, ceilings, windows,
24 doors, and outlets located within the separate interest are part of the separate
25 interest and any other portions of the walls, floors, or ceilings are part of the
26 common area.

27 (c) The estate in a separate interest may be a fee, a life estate, an estate for years,
28 or any combination of the foregoing.

29 **Comment.** Section 4185 continues former Section 1351(l) without change, except as indicated
30 below.

31 The following nonsubstantive changes were made:

- 32 • In subdivision (a)(2), the words “individual unit” were replaced with “separately
33 owned unit.”
34 • The last two unnumbered paragraphs of former Section 1351(l) were designated as
35 subdivisions (b) and (c).
36 • Cross-references were updated to reflect the new location of referenced provisions.
37 • The words “common areas” were singularized.

38 See also Sections 4095 (“common area”), 4105 (“community apartment project”), 4120
39 (“condominium plan”), 4125 (“condominium project”), 4135 (“declaration”), 4175 (“planned
40 development”), 4190 (“stock cooperative”).

41 **§ 4190. “Stock cooperative”**

42 4190. (a) “Stock cooperative” means a development in which a corporation is
43 formed or availed of, primarily for the purpose of holding title to, either in fee

1 simple or for a term of years, improved real property, and all or substantially all of
2 the shareholders of the corporation receive a right of exclusive occupancy in a
3 portion of the real property, title to which is held by the corporation. The owners'
4 interest in the corporation, whether evidenced by a share of stock, a certificate of
5 membership, or otherwise, shall be deemed to be an interest in a common interest
6 development and a real estate development for purposes of subdivision (f) of
7 Section 25100 of the Corporations Code.

8 (b) A "stock cooperative" includes a limited equity housing cooperative which is
9 a stock cooperative that meets the criteria of Section 817.

10 **Comment.** Section 4190 continues former Section 1351(m) without change, except as
11 indicated below.

12 The following nonsubstantive change was made:

- 13 • The unnumbered paragraphs were designated as subdivisions.

14 See also Section 4100 ("common interest development").

15 CHAPTER 2. APPLICATION OF ACT

16 § 4200. Application of act

17 4200. This act applies and a common interest development is created whenever
18 a separate interest coupled with an interest in the common area or membership in
19 the association is, or has been, conveyed, provided all of the following are
20 recorded:

21 (a) A declaration.

22 (b) A condominium plan, if any exists.

23 (c) A final map or parcel map, if Division 2 (commencing with Section 66410)
24 of Title 7 of the Government Code requires the recording of either a final map or
25 parcel map for the common interest development.

26 **Comment.** Section 4200 continues former Section 1352 without change, except as indicated
27 below.

28 The following nonsubstantive change was made:

- 29 • The word "title" was replaced with "act."

30 See also Sections 4080 ("association"), 4095 ("common area"), 4100 ("common interest
31 development"), 4120 ("condominium plan"), 4135 ("declaration"), 4185 ("separate interest").

32 § 4201. Exemption of development without common area

33 4201. Nothing in this act may be construed to apply to a real property
34 development that does not contain common area. This section is declaratory of
35 existing law.

36 **Comment.** Section 4201 continues the substance of former Section 1374 without change,
37 except as indicated below.

38 The following nonsubstantive changes were made:

- 39 • The word "title" was replaced with "act."
- 40 • The words "wherein there does not exist" were restated for clarity.

41 See also Section 4095 ("common area").

1 **§ 4202. Commercial and industrial developments**

2 4202. (a) The following provisions do not apply to a common interest
3 development that is limited to industrial or commercial uses by zoning or by a
4 declaration of covenants, conditions, and restrictions that has been recorded in the
5 official records of each county in which the common interest development is
6 located:

7 (1) Section 4275.

8 (2) Article 5 (commencing with Section 4340) of Chapter 3.

9 (3) Article 2 (commencing with Section 4525), and Article 3 (commencing with
10 Section 4575), of Chapter 4.

11 (4) Section 4600.

12 (5) Section 4765.

13 (6) Sections 5300, 5305, 5565, and 5810, and paragraph (7) of subdivision (a) of
14 Section 5310.

15 (7) Sections 5500 through 5560, inclusive.

16 (8) Subdivision (b) of Section 5600.

17 (9) Subdivision (b) of Section 5605.

18 (b) The Legislature finds that the provisions listed in subdivision (a) are
19 appropriate to protect purchasers in residential common interest developments,
20 however, the provisions may not be necessary to protect purchasers in commercial
21 or industrial developments since the application of those provisions could result in
22 unnecessary burdens and costs for these types of developments.

23 **Comment.** Section 4202 continues former Section 1373 without change, except as indicated
24 below.

25 The following nonsubstantive changes were made:

- 26 • Former Section 1373(a)(3) is superfluous and was not continued.
- 27 • Cross-references were updated to reflect the new location of the referenced provisions.
- 28 • Subdivision (a)(4) was added to continue the substance of former Section
29 1363.07(a)(3)(F).
- 30 • Subdivision (a)(9) refers only to Section 5605(b). It does not refer to the emergency
31 exception provisions of Section 5610, which were also part of former Section 1366(b).

32 See also Sections 4100 (“common interest development”), 4135 (“declaration”).

33 **CHAPTER 3. GOVERNING DOCUMENTS**

34 **Article 1. General Provisions**

35 **§ 4205. Document authority**

36 4205. (a) The governing documents may not include a provision that is
37 inconsistent with the law. To the extent of any inconsistency between the
38 governing documents and the law, the law controls.

39 (b) The articles of incorporation may not include a provision that is inconsistent
40 with the declaration. To the extent of any inconsistency between the articles of
41 incorporation and the declaration, the declaration controls.

(c) The bylaws may not include a provision that is inconsistent with the declaration or the articles of incorporation. To the extent of any inconsistency between the bylaws and the articles of incorporation or declaration, the articles of incorporation or declaration control.

(d) The operating rules may not include a provision that is inconsistent with the declaration, articles of incorporation, or bylaws. To the extent of any inconsistency between the operating rules and the bylaws, articles of incorporation, or declaration, the bylaws, articles of incorporation, or declaration control.

Comment. Subdivisions (a) and (b) of Section 4205 are new.

Subdivision (c) is consistent with Corporations Code Section 7151(c), providing that the bylaws shall be consistent with the articles of incorporation.

Subdivision (d) is consistent with Section 4350(c), providing that an operating rule may not be inconsistent with the declaration, articles of incorporation, or bylaws of the association.

See also Sections 4135 (“declaration”), 4150 (“governing documents”).

§ 4210. Record notice of agent to receive payments

4210. In order to facilitate the collection of regular assessments, special assessments, transfer fees, and similar charges, the board is authorized to record a statement or amended statement identifying relevant information for the association. This statement may include any or all of the following information:

(a) The name of the association as shown in the declaration or the current name of the association, if different.

(b) The name and address of a managing agent or treasurer of the association or other individual or entity authorized to receive assessments and fees imposed by the association.

(c) A daytime telephone number of the authorized party identified in subdivision (b) if a telephone number is available.

(d) A list of separate interests subject to assessment by the association, showing the assessor’s parcel number or legal description, or both, of the separate interests.

(e) The recording information identifying the declaration governing the association.

(f) If an amended statement is being recorded, the recording information identifying the prior statement or statements which the amendment is superseding.

Comment. Section 4210 continues former Section 1366.2(a) without change, except as indicated below.

The following nonsubstantive changes were made:

- The words “of any association” were not continued.
- The words “board of directors” were replaced with “board.” See Section 4085 (“board”).
- In subdivisions (a) and (e), the words “conditions, covenants, and restrictions” were replaced with “declaration. See Section 4135 (“declaration”).

See also Sections 4080 (“association”), 4155 (“managing agent”), 4185 (“separate interest”).

1 **§ 4215. Liberal construction of instruments**

2 4215. Any deed, declaration, or condominium plan for a common interest
3 development shall be liberally construed to facilitate the operation of the common
4 interest development, and its provisions shall be presumed to be independent and
5 severable. Nothing in Article 3 (commencing with Section 715) of Chapter 2 of
6 Title 2 of Part 1 of Division 2 shall operate to invalidate any provisions of the
7 governing documents.

8 **Comment.** Section 4215 continues former Section 1370 without change, except as indicated
9 below.

10 The following nonsubstantive changes were made:

- 11 • “This division” was replaced with “Division 2.”
- 12 • The words “of a common interest development” were not continued.

13 See also Sections 4100 (“common interest development”), 4120 (“condominium plan”), 4135
14 (“declaration”), 4150 (“governing documents”).

15 **§ 4220. Boundaries of units**

16 4220. In interpreting deeds and condominium plans, the existing physical
17 boundaries of a unit in a condominium project, when the boundaries of the unit are
18 contained within a building, or of a unit reconstructed in substantial accordance
19 with the original plans thereof, shall be conclusively presumed to be its boundaries
20 rather than the metes and bounds expressed in the deed or condominium plan, if
21 any exists, regardless of settling or lateral movement of the building and
22 regardless of minor variance between boundaries shown on the plan or in the deed
23 and those of the building.

24 **Comment.** Section 4220 continues former Section 1371 without change.

25 See also Sections 4120 (“condominium plan”), 4125 (“condominium project”).

26 **§ 4225. Deletion of unlawful restrictive covenants**

27 4225. (a) No declaration or other governing document shall include a restrictive
28 covenant in violation of Section 12955 of the Government Code.

29 (b) Notwithstanding any other provision of law or provision of the governing
30 documents, the board, without approval of the members, shall amend any
31 declaration or other governing document that includes a restrictive covenant
32 prohibited by this section to delete the restrictive covenant, and shall restate the
33 declaration or other governing document without the restrictive covenant but with
34 no other change to the declaration or governing document.

35 (c) If the declaration is amended under this section, the board shall record the
36 restated declaration in each county in which the common interest development is
37 located. If the articles of incorporation are amended under this section, the board
38 shall file a certificate of amendment with the Secretary of State pursuant to
39 Section 7814 of the Corporations Code.

40 (d) If after providing written notice to an association, pursuant to Section 4035,
41 requesting that the association delete a restrictive covenant that violates
42 subdivision (a), and the association fails to delete the restrictive covenant within

1 30 days of receiving the notice, the Department of Fair Employment and Housing,
2 a city or county in which a common interest development is located, or any person
3 may bring an action against the association for injunctive relief to enforce
4 subdivision (a). The court may award attorney's fees to the prevailing party.

5 **Comment.** Section 4225 continues former Section 1352.5 without change, except as indicated
6 below.

7 The following nonsubstantive changes were made:

- 8 • In subdivision (b) the words "board of directors of an association" were replaced with
9 "board." See Section 4085 ("board").
- 10 • In subdivision (b) the word "owners" was replaced with "members." See Section 4160
11 ("member").
- 12 • Subdivision (c) was added.
- 13 • Subdivision (d) was revised to include a reference to the provision governing notice to
14 an association (Section 4035).

15 See also Sections 4080 ("association"), 4100 ("common interest development"), 4135
16 ("declaration"), 4150 ("governing documents"), 4170 ("person").

17 **§ 4230. Deletion of declarant provisions in governing documents**

18 4230. (a) Notwithstanding any provision of the governing documents to the
19 contrary, the board may, after the developer has completed construction of the
20 development, has terminated construction activities, and has terminated marketing
21 activities for the sale, lease, or other disposition of separate interests within the
22 development, adopt an amendment deleting from any of the governing documents
23 any provision which is unequivocally designed and intended, or which by its
24 nature can only have been designed or intended, to facilitate the developer in
25 completing the construction or marketing of the development. However,
26 provisions of the governing documents relative to a particular construction or
27 marketing phase of the development may not be deleted under the authorization of
28 this subdivision until that construction or marketing phase has been completed.

29 (b) The provisions which may be deleted by action of the board shall be limited
30 to those which provide for access by the developer over or across the common
31 area for the purposes of (1) completion of construction of the development, and (2)
32 the erection, construction, or maintenance of structures or other facilities designed
33 to facilitate the completion of construction or marketing of separate interests.

34 (c) At least 30 days prior to taking action pursuant to subdivision (a), the board
35 shall deliver to all members, by individual delivery, pursuant to Section 4040, (1)
36 a copy of all amendments to the governing documents proposed to be adopted
37 under subdivision (a), and (2) a notice of the time, date, and place the board will
38 consider adoption of the amendments. The board may consider adoption of
39 amendments to the governing documents pursuant to subdivision (a) only at a
40 meeting that is open to all members, who shall be given opportunity to make
41 comments thereon. All deliberations of the board on any action proposed under
42 subdivision (a) shall only be conducted in an open meeting.

(d) The board may not amend the governing documents pursuant to this section without the approval of a majority of a quorum of the members, pursuant to Section 4070. For the purposes of this section, “quorum” means more than 50 percent of the members who own no more than two separate interests in the development.

Comment. Section 4230 continues former Section 1355.5 without change, except as indicated below.

The following substantive change was made:

- Subdivision (c) was revised to provide for individual delivery of the specified notice. See Section 4040.

The following nonsubstantive changes were made:

- The words “his or her” were not continued in subdivision (a).
- The words “of a common interest development” were not continued in subdivision (a).
- The words “board of directors” and “board of directors of the association” were replaced throughout with “board.” See Section 4085 (“board”).
- Subdivision (b) was revised to use numerals to number the listed items, rather than letters.
- Subdivisions (c) and (d) were revised to use “member.” See Section 4160 (“member”).
- Subdivision (c) was revised to delete the unnecessary word “such.”
- Subdivision (c) was revised to replace the word “which” with “that.”
- Subdivision (d) was revised to use the standard term “approval of a majority of a quorum of the members.” See Section 4070.

See also Sections 4080 (“association”), 4095 (“common area”), 4150 (“governing documents”), 4185 (“separate interest”).

§ 4235. Correction of statutory cross-reference

4235. (a) Notwithstanding any other provision of law or provision of the governing documents, if the governing documents include a reference to a provision of the Davis Stirling Common Interest Development Act that was repealed and continued in a new provision by the act that added this section, the board may amend the governing documents, solely to correct the cross-reference, by adopting a board resolution that shows the correction.

(b) A declaration that is corrected under this section may be restated in corrected form and recorded, provided that a copy of the board resolution authorizing the corrections is recorded along with the restated declaration.

Comment. Section 4235 is new. It is intended to provide a simplified method to correct statutory cross-references in an association’s governing documents that are required as a result of section renumbering effected by the act that added this section. No other amendment can be made under this section.

See also Sections 4085 (“board”), 4100 (“common interest development”), 4135 (“declaration”), 4150 (“governing documents”).

Article 2. Declaration

§ 4250. Content of declaration

4250. (a) A declaration, recorded on or after January 1, 1986, shall contain a legal description of the common interest development, and a statement that the common interest development is a community apartment project, condominium project, planned development, stock cooperative, or combination thereof. The declaration shall additionally set forth the name of the association and the restrictions on the use or enjoyment of any portion of the common interest development that are intended to be enforceable equitable servitudes.

(b) The declaration may contain any other matters the declarant or the members consider appropriate.

Comment. Subdivision (a) of Section 4250 continues the first two sentences of former Section 1353(a)(1) without change.

Subdivision (b) continues former Section 1353(b) without change, except as indicated below.

The following nonsubstantive changes were made:

- The word “owner” was replaced with “member.” See Section 4160 (“member”).
- The words “original signator of the declaration” were replaced with “declarant.” See Section 4130 (“declarant”).

See also Sections 4080 (“association”), 4100 (“common interest development”), 4105 (“community apartment project”), 4125 (“condominium project”), 4130 (“declarant”), 4135 (“declaration”), 4175 (“planned development”), 4190 (“stock cooperative”).

§ 4255. Special disclosures

4255. (a) If a common interest development is located within an airport influence area, a declaration, recorded after January 1, 2004, shall contain the following statement:

NOTICE OF AIRPORT IN VICINITY

This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you.

(b) For purposes of this section, an “airport influence area,” also known as an “airport referral area,” is the area in which current or future airport-related noise, overflight, safety, or airspace protection factors may significantly affect land uses or necessitate restrictions on those uses as determined by an airport land use commission.

1 (c) If a common interest development is within the San Francisco Bay
2 Conservation and Development Commission jurisdiction, as described in Section
3 66610 of the Government Code, a declaration recorded on or after January 1,
4 2006, shall contain the following notice:

5 NOTICE OF SAN FRANCISCO BAY CONSERVATION AND
6 DEVELOPMENT COMMISSION JURISDICTION

7 This property is located within the jurisdiction of the San Francisco Bay
8 Conservation and Development Commission. Use and development of
9 property within the commission's jurisdiction may be subject to special
10 regulations, restrictions, and permit requirements. You may wish to
11 investigate and determine whether they are acceptable to you and your
12 intended use of the property before you complete your transaction.

13 (d) The statement in a declaration acknowledging that a property is located in an
14 airport influence area or within the jurisdiction of the San Francisco Bay
15 Conservation and Development Commission does not constitute a title defect, lien,
16 or encumbrance.

17 **Comment.** Section 4255 continues all but the first two sentences of former Section 1353(a)(1)-
18 (4) without change, except as indicated below.

19 The following nonsubstantive change was made:

- 20 • The words "the property" were replaced with "a common interest development" to
21 improve clarity. See also Bus. & Prof. Code § 11010 (disclosure of property within
22 airport influence area); Pub. Util. Code § 21675 (designation of "airport influence area"
23 by county airport land use commission).

24 See also Sections 4100 ("common interest development"), 4135 ("declaration").

25 **§ 4260. Amendment authorized**

26 4260. Except to the extent that a declaration provides by its express terms that it
27 is not amendable, in whole or in part, a declaration that fails to include provisions
28 permitting its amendment at all times during its existence may be amended at any
29 time.

30 **Comment.** Section 4260 continues the first sentence of former Section 1355(b) without
31 change, except as indicated below.

32 The following nonsubstantive change was made:

- 33 • The word "which" was replaced with "that."

34 See also Section 4135 ("declaration").

35 **§ 4265. Amendment to extend term of declaration authorized**

36 4265. (a) The Legislature finds that there are common interest developments that
37 have been created with deed restrictions that do not provide a means for the
38 members to extend the term of the declaration. The Legislature further finds that
39 covenants and restrictions, contained in the declaration, are an appropriate method
40 for protecting the common plan of developments and to provide for a mechanism

1 for financial support for the upkeep of common area including, but not limited to,
2 roofs, roads, heating systems, and recreational facilities. If declarations terminate
3 prematurely, common interest developments may deteriorate and the housing
4 supply of affordable units could be impacted adversely. The Legislature further
5 finds and declares that it is in the public interest to provide a vehicle for extending
6 the term of the declaration if the extension is approved by a majority of all
7 members, pursuant to Section 4065.

8 (b) A declaration that specifies a termination date, but that contains no provision
9 for extension of the termination date, may be extended, before its termination date,
10 by the approval of members pursuant to Section 4270.

11 (c) No single extension of the terms of the declaration made pursuant to this
12 section shall exceed the initial term of the declaration or 20 years, whichever is
13 less. However, more than one extension may occur pursuant to this section.

14 **Comment.** Subdivision (a) of Section 4265 continues former Section 1357(a) without change,
15 except as indicated below.

16 The following nonsubstantive changes were made:

- 17 • The defined term “member” was used. See Section 4160 (“member”).
- 18 • The words “common areas” were singularized.
- 19 • The word “which” was replaced with “that.”
- 20 • A reference to approval by “members having more than 50 percent of the votes in the
21 association” was replaced with standard terminology.

22 Subdivision (b) continues part of the substance of former Section 1357(b), authorizing
23 extension of the termination date of a declaration that does not provide for extension of the
24 termination date, except as indicated below.

25 The following nonsubstantive change was made:

- 26 • Language was added to make clear that the extension must occur before the termination
27 date.

28 The procedure for extension of the termination date provided in former Section 1357(b)-(c) is
29 not continued. An extension would instead be made pursuant to the general procedure for
30 amendment of a declaration. See Section 4270.

31 Subdivision (c) continues former Section 1357(d) without change.

32 See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest
33 development”), 4135 (“declaration”).

34 **§ 4270. Amendment procedure**

35 4270. (a) A declaration may be amended pursuant to the declaration or this act.
36 Except as provided in Section 4275, an amendment is effective after all of the
37 following requirements have been met:

38 (1) The amendment has been approved by the percentage of members required
39 by the declaration and any other person whose approval is required by the
40 declaration.

41 (2) That fact has been certified in a writing executed and acknowledged by the
42 officer designated in the declaration or by the association for that purpose, or if no
43 one is designated, by the president of the association.

44 (3) The amendment has been recorded in each county in which a portion of the
45 common interest development is located.

(b) If the declaration does not specify the percentage of members who must approve an amendment of the declaration, an amendment may be approved by a majority of all members, pursuant to Section 4065.

Comment. Subdivision (a) of Section 4270 continues former Section 1355(a) without change, except as indicated below.

The following substantive changes were made:

- The term “governing documents” as replaced with the term “declaration.”
- Paragraph (a)(1) was revised to recognize that a declaration may require that an amendment be approved of a non-member.

The following nonsubstantive changes were made:

- The first word was replaced with “A.”
- The word “title” was replaced with “act.”
- The defined term “member” was used. See Section 4160 (“member”).
- The subdivision was divided into paragraphs, with conforming technical adjustments to the language.

Subdivision (b) generalizes a rule stated in former Sections 1355(b) and 1357.

See also Sections 4080 (“association”), 4100 (“common interest development”), 4135 (“declaration”), 4150 (“governing documents”), 4170 (“person”).

§ 4275. Judicial authorization of amendment

4275. (a) If in order to amend a declaration, the declaration requires members having more than 50 percent of the votes in the association, in a single class voting structure, or members having more than 50 percent of the votes in more than one class in a voting structure with more than one class, to vote in favor of the amendment, the association, or any member, may petition the superior court of the county in which the common interest development is located for an order reducing the percentage of the affirmative votes necessary for such an amendment. The petition shall describe the effort that has been made to solicit approval of the association members in the manner provided in the declaration, the number of affirmative and negative votes actually received, the number or percentage of affirmative votes required to effect the amendment in accordance with the existing declaration, and other matters the petitioner considers relevant to the court’s determination. The petition shall also contain, as exhibits thereto, copies of all of the following:

(1) The governing documents.

(2) A complete text of the amendment.

(3) Copies of any notice and solicitation materials utilized in the solicitation of member approvals.

(4) A short explanation of the reason for the amendment.

(5) Any other documentation relevant to the court’s determination.

(b) Upon filing the petition, the court shall set the matter for hearing and issue an ex parte order setting forth the manner in which notice shall be given.

(c) The court may, but shall not be required to, grant the petition if it finds all of the following:

1 (1) The petitioner has given not less than 15 days written notice of the court
2 hearing to all members of the association, to any mortgagee of a mortgage or
3 beneficiary of a deed of trust who is entitled to notice under the terms of the
4 declaration, and to the city, county, or city and county in which the common
5 interest development is located that is entitled to notice under the terms of the
6 declaration.

7 (2) Balloting on the proposed amendment was conducted in accordance with the
8 governing documents, this act, and any other applicable law.

9 (3) A reasonably diligent effort was made to permit all eligible members to vote
10 on the proposed amendment.

11 (4) Members having more than 50 percent of the votes, in a single class voting
12 structure, voted in favor of the amendment. In a voting structure with more than
13 one class, where the declaration requires a majority of more than one class to vote
14 in favor of the amendment, members having more than 50 percent of the votes of
15 each class required by the declaration to vote in favor of the amendment voted in
16 favor of the amendment.

17 (5) The amendment is reasonable.

18 (6) Granting the petition is not improper for any reason stated in subdivision (e).

19 (d) If the court makes the findings required by subdivision (c), any order issued
20 pursuant to this section may confirm the amendment as being validly approved on
21 the basis of the affirmative votes actually received during the balloting period or
22 the order may dispense with any requirement relating to quorums or to the number
23 or percentage of votes needed for approval of the amendment that would otherwise
24 exist under the governing documents.

25 (e) Subdivisions (a) to (d), inclusive, notwithstanding, the court shall not be
26 empowered by this section to approve any amendment to the declaration that:

27 (1) Would change provisions in the declaration requiring the approval of
28 members having more than 50 percent of the votes in more than one class to vote
29 in favor of an amendment, unless members having more than 50 percent of the
30 votes in each affected class approved the amendment.

31 (2) Would eliminate any special rights, preferences, or privileges designated in
32 the declaration as belonging to the declarant, without the consent of the declarant.

33 (3) Would impair the security interest of a mortgagee of a mortgage or the
34 beneficiary of a deed of trust without the approval of the percentage of the
35 mortgagees and beneficiaries specified in the declaration, if the declaration
36 requires the approval of a specified percentage of the mortgagees and
37 beneficiaries.

38 (f) An amendment is not effective pursuant to this section until the court order
39 and amendment have been recorded in every county in which a portion of the
40 common interest development is located. The amendment may be acknowledged
41 by, and the court order and amendment may be recorded by, any person
42 designated in the declaration or by the association for that purpose, or if no one is
43 designated for that purpose, by the president of the association. Upon recordation

1 of the amendment and court order, the declaration, as amended in accordance with
2 this section, shall have the same force and effect as if the amendment were
3 adopted in compliance with every requirement imposed by the governing
4 documents.

5 (g) Within a reasonable time after the amendment is recorded the association
6 shall deliver to each member, by individual delivery, pursuant to Section 4040, a
7 copy of the amendment, together with a statement that the amendment has been
8 recorded.

9 **Comment.** Section 4275 continues former Section 1356 without change, except as indicated
10 below.

11 The following substantive change was made:

- 12 • Language was added to paragraph (c)(2) to require a finding that a vote was held in
13 accordance with “this act, and any other applicable law.”

14 The following nonsubstantive changes were made:

- 15 • Subdivision (g) was revised to specify the procedure for individual delivery of notice
16 and to use “member.” See Section 4160 (“member”).

17 An incorporated association may also petition the court under Corporations Code Section 7515
18 with respect to actions governed by that provision.

19 See also Sections 4080 (“association”), 4100 (“common interest development”), 4130
20 (“declarant”), 4135 (“declaration”), 4150 (“governing documents”), 4170 (“person”).

21 Article 3. Articles of Incorporation

22 § 4280. Content of articles

23 4280. (a) The articles of incorporation of an association filed with the Secretary
24 of State on or after January 1, 1995, shall include a statement, which shall be in
25 addition to the statement of purposes of the corporation, that does all of the
26 following:

27 (1) Identifies the corporation as an association formed to manage a common
28 interest development under the Davis-Stirling Common Interest Development Act.

29 (2) States the business or corporate office of the association, if any, and, if the
30 office is not on the site of the common interest development, states the nine-digit
31 ZIP Code, front street, and nearest cross street for the physical location of the
32 common interest development.

33 (3) States the name and address of the association’s managing agent, if any.

34 (b) The statement of principal business activity contained in the annual
35 statement filed by an incorporated association with the Secretary of State pursuant
36 to Section 1502 of the Corporations Code shall also contain the statement
37 specified in subdivision (a).

38 **Comment.** Section 4280 continues former Section 1363.5 without change, except as indicated
39 below.

40 The following nonsubstantive changes were made:

- 41 • A cross-reference to the definition of “managing agent” was not continued. See Section
42 4155 (“managing agent”).

- The words “common interest development association” were replaced with “association.”

See also Corp. Code §§ 1502 (annual statement), 7130-7135 (content of articles of incorporation), 7810-7820 (amendment of articles of incorporation), 7150-7153 (content and amendment of bylaws).

See also Sections 4080 (“association”), 4100 (“common interest development”).

Article 4. Condominium Plan

§ 4285. “Condominium plan”

4285. A condominium plan shall contain all of the following:

(a) A description or survey map of a condominium project, which shall refer to or show monumentation on the ground.

(b) A three-dimensional description of a condominium project, one or more dimensions of which may extend for an indefinite distance upwards or downwards, in sufficient detail to identify the common area and each separate interest.

(c) A certificate consenting to the recordation of the condominium plan pursuant to this act that is signed and acknowledged as provided in Section 4290.

Comment. Section 4285 continues the introduction of former Section 1351(e) without change, except as indicated below.

The following nonsubstantive changes were made:

- The enumerated items were set out as subdivisions.
- The word “title” was replaced with “act.”
- The list of persons who must sign and acknowledge the certificate consenting to recordation of the condominium plan was replaced with a reference to the section governing the creation and recordation of a condominium plan.

See also Sections 4095 (“common area”), 4125 (“condominium project”), 4185 (“separate interest”).

§ 4290. Recordation of condominium plan

4290. (a) The certificate consenting to the recordation of a condominium plan that is required by subdivision (c) of Section 4120 shall be signed and acknowledged by all of the following persons:

(1) The record owner of fee title to that property included in the condominium project.

(2) In the case of a condominium project that will terminate upon the termination of an estate for years, by all lessors and lessees of the estate for years.

(3) In the case of a condominium project subject to a life estate, by all life tenants and remainder interests.

(4) The trustee or the beneficiary of each recorded deed of trust, and the mortgagee of each recorded mortgage encumbering the property.

(b) Owners of mineral rights, easements, rights-of-way, and other nonpossessory interests do not need to sign the certificate.

(c) In the event a conversion to condominiums of a community apartment project or stock cooperative has been approved by the required number of owners, trustees, beneficiaries, and mortgagees pursuant to Section 66452.10 of the Government Code, the certificate need only be signed by those owners, trustees, beneficiaries, and mortgagees approving the conversion.

Comment. Section 4290 continues the substance of former Section 1351(e)(3), except as indicated below.

The following nonsubstantive changes were made:

- The last paragraph of former Section 1351(e) was not continued in this section.
- A cross-reference to Section 4120(c) was added to the first paragraph.
- Subdivision (b) was revised to make clear that it states an exception to who must sign the certificate of consent to recordation, rather than the condominium plan itself.

See also Sections 4105 (“community apartment project”), 4120 (“condominium plan”), 4125 (“condominium project”), 4170 (“person”), 4190 (“stock cooperative”).

§ 4295. Amendment or revocation of condominium plan

4295. A condominium plan may be amended or revoked by a recorded instrument that is acknowledged and signed by all the persons who, at the time of amendment or revocation, are persons whose signatures are required under Section 4290.

Comment. Section 4295 continues the last paragraph of former Section 1351(e) without change, except as indicated below.

The following nonsubstantive change was made:

- Language was added to make clear that the persons whose signatures are required for amendment or revocation of a condominium plan are the persons who fall within the groups described in Section 4290 at the time of amendment or revocation.

See also Sections 4120 (“condominium plan”), 4170 (“person”).

Article 5. Operating Rules

§ 4340. “Operating rule”

4340. For the purposes of this article, “operating rule” means a regulation adopted by the board that applies generally to the management and operation of the common interest development or the conduct of the business and affairs of the association.

Comment. Section 4340 continues former Section 1357.100(a) without change.

See also Sections 4080 (association), 4085 (“board”), 4100 (common interest development).

§ 4350. Requirements for validity and enforceability

4350. An operating rule is valid and enforceable only if all of the following requirements are satisfied:

(a) The rule is in writing.

(b) The rule is within the authority of the board conferred by law or by the declaration, articles of incorporation or association, or bylaws of the association.

1 (c) The rule is not inconsistent with governing law and the declaration, articles
2 of incorporation or association, and bylaws of the association.

3 (d) The rule is adopted, amended, or repealed in good faith and in substantial
4 compliance with the requirements of this article.

5 (e) The rule is reasonable.

6 **Comment.** Section 4350 continues former Section 1357.110 without change, except as
7 indicated below.

8 The following nonsubstantive change was made:

- 9 • The words “board of directors of the association” were replaced with “board.” See
10 Section 4085 (“board”).

11 See also Sections 4080 (“association”), 4135 (“declaration”), 4340 (“operating rule”).

12 **§ 4355. Application of rulemaking procedures**

13 4355. (a) Sections 4360 and 4365 only apply to an operating rule that relates to
14 one or more of the following subjects:

15 (1) Use of the common area or of an exclusive use common area.

16 (2) Use of a separate interest, including any aesthetic or architectural standards
17 that govern alteration of a separate interest.

18 (3) Member discipline, including any schedule of monetary penalties for
19 violation of the governing documents and any procedure for the imposition of
20 penalties.

21 (4) Any standards for delinquent assessment payment plans.

22 (5) Any procedures adopted by the association for resolution of disputes.

23 (6) Any procedures for reviewing and approving or disapproving a proposed
24 physical change to a member’s separate interest or to the common area.

25 (7) Procedures for elections.

26 (b) Sections 4360 and 4365 do not apply to the following actions by the board:

27 (1) A decision regarding maintenance of the common area.

28 (2) A decision on a specific matter that is not intended to apply generally.

29 (3) A decision setting the amount of a regular or special assessment.

30 (4) A rule change that is required by law, if the board has no discretion as to the
31 substantive effect of the rule change.

32 (5) Issuance of a document that merely repeats existing law or the governing
33 documents.

34 **Comment.** Section 4355 continues former Section 1357.120 without change, except as
35 indicated below.

36 The following nonsubstantive change was made:

- 37 • The words “board of directors” and “board of directors of the association” were
38 replaced with “board.” See Section 4085 (“board”).

39 See also Sections 4080 (“association”), 4095 (“common area”), 4145 (“exclusive use common
40 area”), 4150 (“governing documents”), 4160 (“member”), 4340 (“operating rule”), 4180 (“rule
41 change”), 4185 (“separate interest”).

1 **§ 4360. Approval of rule change by board**

2 4360. (a) The board shall provide general notice pursuant to Section 4045 of a
3 proposed rule change at least 30 days before making the rule change. The notice
4 shall include the text of the proposed rule change and a description of the purpose
5 and effect of the proposed rule change. Notice is not required under this
6 subdivision if the board determines that an immediate rule change is necessary to
7 address an imminent threat to public health or safety or imminent risk of
8 substantial economic loss to the association.

9 (b) A decision on a proposed rule change shall be made at a board meeting, after
10 consideration of any comments made by association members.

11 (c) As soon as possible after making a rule change, but not more than 15 days
12 after making the rule change, the board shall deliver general notice pursuant to
13 Section 4045 of the rule change. If the rule change was an emergency rule change
14 made under subdivision (d), the notice shall include the text of the rule change, a
15 description of the purpose and effect of the rule change, and the date that the rule
16 change expires.

17 (d) If the board determines that an immediate rule change is required to address
18 an imminent threat to public health or safety, or an imminent risk of substantial
19 economic loss to the association, it may make an emergency rule change, and no
20 notice is required, as specified in subdivision (a). An emergency rule change is
21 effective for 120 days, unless the rule change provides for a shorter effective
22 period. A rule change made under this subdivision may not be readopted under
23 this subdivision.

24 **Comment.** Section 4360 continues former Section 1357.130 without change, except as
25 indicated below.

26 The following substantive changes were made:

- 27 • A reference to former Section 1350.7 was replaced with references to the provision
28 governing general notice. Delivery of “general notice” under Section 4045 preserves
29 most of the substance of former law governing delivery of notice under this section,
30 except that Section 4045 permits the posting of notices and requires that individual
31 notice delivery methods be used for a member who has requested that form of delivery.
32 *Cf.* former Section 1350.7. See Sections 4085 (“board”), 4090 (“board meeting”).

33 The following nonsubstantive changes were made:

- 34 • The words “to the members” were not continued in subdivision (a).
35 • The words “board of directors” were replaced throughout with the “board.” See Section
36 4085 (“board”).
37 • The words “meeting of the board of directors” were replaced with “board meeting.”
38 See Section 4090 (“board meeting”).
39 • In subdivision (d), a semi-colon was replaced with a comma, for grammatical reasons.

40 See also Sections 4080 (“association”), 4160 (“member”), 4180 (“rule change”).

41 **§ 4365. Reversal of rule change by members**

42 4365. (a) Members of an association owning 5 percent or more of the separate
43 interests may call a special vote of the members to reverse a rule change.

(b) A special vote of the members may be called by delivering a written request to the president or secretary of the board. Not less than 35 days nor more than 90 days after receipt of a proper request, the association shall hold a vote of the members on whether to reverse the rule change, pursuant to Article 4 (commencing with Section 5100) of Chapter 6. The written request may not be delivered more than 30 days after the members of the association are notified of the rule change. Members are deemed to have been notified of a rule change on delivery of notice of the rule change, or on enforcement of the resulting rule, whichever is sooner.

(c) For the purposes of Section 5225 of this code and Section 8330 of the Corporations Code, collection of signatures to call a special vote under this section is a purpose reasonably related to the interests of the members of the association. A member request to copy or inspect the membership list solely for that purpose may not be denied on the grounds that the purpose is not reasonably related to the member's interests as a member.

(d) The rule change may be reversed by the affirmative vote of a majority of a quorum of the members, pursuant to Section 4070, or if the declaration or bylaws require a greater percentage, by the affirmative vote of the percentage required.

(e) Unless otherwise provided in the declaration or bylaws, for the purposes of this section, a member may cast one vote per separate interest owned.

(f) A rule change reversed under this section may not be readopted for one year after the date of the vote reversing the rule change. Nothing in this section precludes the board from adopting a different rule on the same subject as the rule change that has been reversed.

(g) As soon as possible after the close of voting, but not more than 15 days after the close of voting, the board shall provide general notice pursuant to Section 4045 of the results of the member vote.

(h) This section does not apply to an emergency rule change made under subdivision (d) of Section 4360.

Comment. Section 4365 continues former Section 1357.140 without change, except as indicated below.

The following substantive changes were made:

- A reference to former Section 1350.7 was replaced with references to the provision governing general notice pursuant to Section 4045.
- A reference to voting pursuant to Corporations Code Section 7513 was replaced with a reference to the voting provisions of this act.

The following nonsubstantive changes were made:

- Cross-references were updated to reflect the new location of referenced provisions.
- The words "member of the association" were replaced with "member." See Section 4160 ("member").
- The words "board of directors" were replaced with "board." See Section 4085 ("board").

See also Sections 4080 ("association"), 4135 ("declaration"), 4180 ("rule change"), 4185 ("separate interest").

1 **§ 4370. Applicability of article to changes commenced before and after January 1, 2004**

2 4370. (a) This article applies to a rule change commenced on or after January 1,
3 2004.

4 (b) Nothing in this article affects the validity of a rule change commenced
5 before January 1, 2004.

6 (c) For the purposes of this section, a rule change is commenced when the board
7 takes its first official action leading to adoption of the rule change.

8 **Comment.** Section 4370 continues former Section 1357.150 without change, except as
9 indicated below.

10 The following nonsubstantive change was made:

- 11 • The words “board of directors of the association” were replaced with “board.” See
12 Section 4085 (“board”).

13 See also Section 4180 (“rule change”).

14 **CHAPTER 4. OWNERSHIP AND TRANSFER OF INTERESTS**

15 **Article 1. Ownership Rights and Interests**

16 **§ 4500. Ownership of common area**

17 4500. Unless the declaration otherwise provides, in a condominium project, or in
18 a planned development in which the common area is owned by the owners of the
19 separate interests, the common area is owned as tenants in common, in equal
20 shares, one for each separate interest.

21 **Comment.** Section 4500 continues former Section 1362 without change, except as indicated
22 below.

23 The following nonsubstantive changes were made:

- 24 • The words “common areas” were singularized.
25 • The words “unit or lot” were replaced with “separate interest.”

26 See also Sections 4095 (“common area”), 4125 (“condominium project”), 4135
27 (“declaration”), 4175 (“planned development”), 4185 (“separate interest”).

28 **§ 4505. Appurtenant rights and easements**

29 4505. Unless the declaration otherwise provides:

30 (a) In a community apartment project and condominium project, and in those
31 planned developments with common area owned in common by the owners of the
32 separate interests, there are appurtenant to each separate interest nonexclusive
33 rights of ingress, egress, and support, if necessary, through the common area. The
34 common area is subject to these rights.

35 (b) In a stock cooperative, and in a planned development with common area
36 owned by the association, there is an easement for ingress, egress, and support, if
37 necessary, appurtenant to each separate interest. The common area is subject to
38 these easements.

39 **Comment.** Section 4505 continues former Section 1361 without change, except as indicated
40 below.

1 The following nonsubstantive change was made:

- 2 • The words “common areas” were singularized.

3 See also Sections 4080 (“association”), 4095 (“common area”), 4105 (“community apartment
4 project”), 4125 (“condominium project”), 4135 (“declaration”), 4175 (“planned development”),
5 4185 (“separate interest”), 4190 (“stock cooperative”).

6 **§ 4510. Access to separate interest property**

7 4510. Except as otherwise provided in law, an order of the court, or an order
8 pursuant to a final and binding arbitration decision, an association may not deny a
9 member or occupant physical access to the member’s or occupant’s separate
10 interest, either by restricting access through the common area to the separate
11 interest, or by restricting access solely to the separate interest.

12 **Comment.** Section 4510 continues former Section 1361.5 without change, except as indicated
13 below.

14 The following nonsubstantive changes were made:

- 15 • The words “his or her” were replaced with “the member’s or occupant’s.”
- 16 • References to the “owner’s” separate interest were revised to omit the word “owner’s.”
17 This will help to avoid any implication that the reference does not also apply to an
18 “occupant” of a separate interest.
- 19 • The word “owner” was replaced with “member” throughout. See Section 4160
20 (“member”).
- 21 • The words “common areas” were singularized.

22 See also Sections 4080 (“association”), 4095 (“common area”), 4185 (“separate interest”).

23 **Article 2. Transfer Disclosure**

24 **§ 4525. Disclosure to prospective purchaser**

25 4525. (a) The owner of a separate interest shall provide the following documents
26 to a prospective purchaser of the separate interest, as soon as practicable before the
27 transfer of title or the execution of a real property sales contract, as defined in
28 Section 2985:

29 (1) A copy of all governing documents. If the association is not incorporated,
30 this shall include a statement in writing from an authorized representative of the
31 association that the association is not incorporated.

32 (2) If there is a restriction in the governing documents limiting the occupancy,
33 residency, or use of a separate interest on the basis of age in a manner different
34 from that provided in Section 51.3, a statement that the restriction is only
35 enforceable to the extent permitted by Section 51.3 and a statement specifying the
36 applicable provisions of Section 51.3.

37 (3) A copy of the most recent documents distributed pursuant to Article 7
38 (commencing with Section 5300) of Chapter 6.

39 (4) A true statement in writing obtained from an authorized representative of the
40 association as to the amount of the association’s current regular and special
41 assessments and fees, any assessments levied upon the owner’s interest in the
42 common interest development that are unpaid on the date of the statement, and any

1 monetary fines or penalties levied upon the owner's interest and unpaid on the
2 date of the statement. The statement obtained from an authorized representative
3 shall also include true information on late charges, interest, and costs of collection
4 which, as of the date of the statement, are or may be made a lien upon the owner's
5 interest in a common interest development pursuant to Article 2 (commencing
6 with Section 5650) of Chapter 8.

7 (5) A copy or a summary of any notice previously sent to the owner pursuant to
8 Section 5855 that sets forth any alleged violation of the governing documents that
9 remains unresolved at the time of the request. The notice shall not be deemed a
10 waiver of the association's right to enforce the governing documents against the
11 owner or the prospective purchaser of the separate interest with respect to any
12 violation. This paragraph shall not be construed to require an association to inspect
13 an owner's separate interest.

14 (6) A copy of the preliminary list of defects provided to each member pursuant
15 to Section 6000, unless the association and the builder subsequently enter into a
16 settlement agreement or otherwise resolve the matter and the association complies
17 with Section 6100. Disclosure of the preliminary list of defects pursuant to this
18 paragraph does not waive any privilege attached to the document. The preliminary
19 list of defects shall also include a statement that a final determination as to
20 whether the list of defects is accurate and complete has not been made.

21 (7) A copy of the latest information provided for in Section 6100.

22 (8) Any change in the association's current regular and special assessments and
23 fees which have been approved by the board, but have not become due and
24 payable as of the date disclosure is provided pursuant to this subdivision.

25 (b) This section does not apply to an owner that is subject to the requirements of
26 Section 11018.6 of the Business and Professions Code.

27 **Comment.** Section 4525 continues the substance of former Section 1368(a) without change,
28 except as indicated below.

29 The following nonsubstantive changes were made:

- 30 • Cross-references were updated to reflect the new location of the referenced provisions.
- 31 • The words "association's board of directors" were replaced with "board." See Section
32 4085 ("board").
- 33 • Subdivision (a)(1) was revised to make clear that all governing documents must be
34 provided. See Section 4150 ("governing documents").
- 35 • The words "member of the association" were replaced with "member." See Section
36 4160 ("member").

37 See also Sections 4080 ("association"), 4100 ("common interest development"), 4185
38 ("separate interest").

39 § 4530. Information to be provided by association

40 4530. (a) Upon written request, an association shall, within 10 days of the
41 mailing or delivery of the request, provide the owner of a separate interest with a
42 copy of the requested items specified in Section 4525.

(b) The items required to be made available pursuant to this section may be maintained in electronic form and requesting parties shall have the option of receiving them by electronic transmission or machine readable storage media if the association maintains these items in electronic form.

(c) The association may charge a reasonable fee for this service based upon the association's actual cost to procure, prepare, and reproduce the requested items.

Comment. Section 4530 continues former Section 1368(b) without change, except as indicated below.

The following nonsubstantive changes were made:

- The provision was divided into subdivisions for ease of reference.
- A cross-reference was updated to reflect the new location of the referenced provision.

See also Sections 4080 ("association"), 4185 ("separate interest").

§ 4535. Related requirements

4535. In addition to the requirements of this article, an owner transferring title to a separate interest shall comply with applicable requirements of Sections 1133 and 1134.

Comment. Section 4535 continues former Section 1368(f) without change, except as indicated below.

The following nonsubstantive change was made:

- "Section" was replaced with "article" to reflect that former Section 1368 is continued in this article.

See also Section 4185 ("separate interest").

§ 4540. Enforcement of article

4540. Any person who willfully violates this article is liable to the purchaser of a separate interest that is subject to this section for actual damages occasioned thereby and, in addition, shall pay a civil penalty in an amount not to exceed five hundred dollars (\$500). In an action to enforce this liability, the prevailing party shall be awarded reasonable attorney's fees.

Comment. Section 4540 continues former Section 1368(d) without change, except as indicated below.

The following nonsubstantive changes were made:

- "Section" was replaced with "article."
- The words "or entity" were not continued. See Section 4170 ("person").

See also Section 4185 ("separate interest").

§ 4545. Validity of title unaffected

4545. Nothing in this article affects the validity of title to real property transferred in violation of this article.

Comment. Section 4545 continues former Section 1368(e) without change, except as indicated below.

The following nonsubstantive change was made:

- "Section" was replaced with "article."

Article 3. Transfer Fee

§ 4575. Transfer fee

4575. Except as provided in Section 4580, neither an association nor a community service organization or similar entity may impose or collect any assessment, penalty, or fee in connection with a transfer of title or any other interest except for the following:

- (a) An amount not to exceed the association's actual costs to change its records.
- (b) An amount authorized by Section 4530.

Comment. Section 4575 continues former Section 1368(c)(1) without change, except as indicated below.

The following nonsubstantive change was made:

- Cross-references were updated to reflect the new location of the referenced provisions.

See also Sections 4080 ("association"), 4110 ("community service organization or similar entity").

§ 4580. Exemption from transfer fee limitations

4580. The prohibition in Section 4575 does not apply to a community service organization or similar entity, or to a nonprofit entity that provides services to a common interest development under a declaration of trust, of either of the following types:

- (a) An organization or entity that satisfies both of the following conditions:

- (1) It was established before February 20, 2003.

- (2) It exists and operates, in whole or in part, to fund or perform environmental mitigation or to restore or maintain wetlands or native habitat, as required by the state or local government as an express written condition of development.

- (b) An organization or entity that satisfies all of the following conditions:

- (1) It is not an organization or entity described by subdivision (a).

- (2) It was established and received a transfer fee before January 1, 2004.

- (3) On and after January 1, 2006, it offers a purchaser the following payment options for the fee or charge it collects at time of transfer:

- (A) Paying the fee or charge at the time of transfer.

- (B) Paying the fee or charge pursuant to an installment payment plan for a period of not less than seven years. If the purchaser elects to pay the fee or charge in installment payments, the organization or entity may also collect additional amounts that do not exceed the actual costs for billing and financing on the amount owed. If the purchaser sells the separate interest before the end of the installment payment plan period, the purchaser shall pay the remaining balance before the transfer.

Comment. Section 4580 continues the substance of former Section 1368(c)(2).

See also Sections 4100 ("common interest development"), 4110 ("community service organization or similar entity"), 4185 ("separate interest").

Article 4. Restrictions on Transfers

§ 4600. Grant of exclusive use

4600. (a) Unless the governing documents specify a different percentage, the affirmative vote of members owning at least 67 percent of the separate interests in the common interest development shall be required before the board may grant exclusive use of any portion of the common area to a member.

(b) Subdivision (a) does not apply to the following actions:

(1) A reconveyance of all or any portion of that common area to the subdivider to enable the continuation of development that is in substantial conformance with a detailed plan of phased development submitted to the Real Estate Commissioner with the application for a public report.

(2) Any grant of exclusive use that is in substantial conformance with a detailed plan of phased development submitted to the Real Estate Commissioner with the application for a public report or in accordance with the governing documents approved by the Real Estate Commissioner.

(3) Any grant of exclusive use that is for any of the following reasons:

(A) To eliminate or correct engineering errors in documents recorded with the county recorder or on file with a public agency or utility company.

(B) To eliminate or correct encroachments due to errors in construction of any improvements.

(C) To permit changes in the plan of development submitted to the Real Estate Commissioner in circumstances where the changes are the result of topography, obstruction, hardship, aesthetic considerations, or environmental conditions.

(D) To fulfill the requirement of a public agency.

(E) To transfer the burden of management and maintenance of any common area that is generally inaccessible and not of general use to the membership at large of the association.

(F) To accommodate a disability.

(G) To assign a parking space, storage unit, or other amenity, that is designated in the declaration for assignment, but is not assigned by the declaration to a specific separate interest.

(H) To comply with governing law.

(c) Any measure placed before the members requesting that the board grant exclusive use of any portion of the common area shall specify whether the association will receive any monetary consideration for the grant and whether the association or the transferee will be responsible for providing any insurance coverage for exclusive use of the common area.

Comment. Section 4600 continues former Section 1363.07 without change, except as indicated below.

The following substantive changes were made:

- The section is no longer limited in its application to a common area that the association owns or in which the association has an easement right. It now also applies to common area that is owned by the members as tenants in common.
- Paragraphs (b)(3)(F)-(H) are new.

The following nonsubstantive changes were made:

- An introductory clause was added in subdivision (b), to introduce the list of exceptions.
- The substance of former subdivision (a)(3)(F) was continued in Section 4202.
- The words “board of directors” were replaced throughout with “board.” See Section 4085 (“board”).

See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest development”), 4135 (“declaration”), 4145 (“exclusive use common area”), 4150 (“governing documents”), 4160 (“member”), 4185 (“separate interest”).

§ 4605. Civil action to enforce Section 4600

4605. (a) A member of an association may bring a civil action for declaratory or equitable relief for a violation of Section 4600 by the association, including, but not limited to, injunctive relief, restitution, or a combination thereof, within one year of the date the cause of action accrues.

(b) A member who prevails in a civil action to enforce the member’s rights pursuant to Section 4600 shall be entitled to reasonable attorney’s fees and court costs, and the court may impose a civil penalty of up to five hundred dollars (\$500) for each violation, except that each identical violation shall be subject to only one penalty if the violation affects each member equally. A prevailing association shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

Comment. Section 4605 continues former Section 1363.09(a)-(b) without change, except as indicated below.

The following nonsubstantive changes were made:

- The words “an association of which he or she is a member” were replaced with “the association.”
- The words “this article” were replaced with “Section 4600.”
- The words “his or her” were replaced with “the member’s.”
- The second sentence of former Section 1363.09(a) was not continued because it was irrelevant to judicial enforcement of this article.
- The words “member of the association” were replaced with “member.” See Section 4160 (“member”).

See also Section 4080 (“association”).

§ 4610. Partition of condominium project

4610. (a) Except as provided in this section, the common area in a condominium project shall remain undivided, and there shall be no judicial partition thereof. Nothing in this section shall be deemed to prohibit partition of a cotenancy in a condominium.

(b) The owner of a separate interest in a condominium project may maintain a partition action as to the entire project as if the owners of all of the separate interests in the project were tenants in common in the entire project in the same

1 proportion as their interests in the common area. The court shall order partition
2 under this subdivision only by sale of the entire condominium project and only
3 upon a showing of one of the following:

4 (1) More than three years before the filing of the action, the condominium
5 project was damaged or destroyed, so that a material part was rendered unfit for its
6 prior use, and the condominium project has not been rebuilt or repaired
7 substantially to its state prior to the damage or destruction.

8 (2) Three-fourths or more of the project is destroyed or substantially damaged
9 and owners of separate interests holding in the aggregate more than a 50-percent
10 interest in the common area oppose repair or restoration of the project.

11 (3) The project has been in existence more than 50 years, is obsolete and
12 uneconomic, and owners of separate interests holding in the aggregate more than a
13 50-percent interest in the common area oppose repair or restoration of the project.

14 (4) Any conditions in the declaration for sale under the circumstances described
15 in this subdivision have been met.

16 **Comment.** Section 4610 continues former Section 1359 without change, except as indicated
17 below.

18 The following nonsubstantive changes were made:

- 19 • The words “common areas” were singularized.
- 20 • Subdivision (b)(4) was rephrased to avoid use of “such.”

21 See also Sections 4095 (“common area”), 4125 (“condominium project”), 4135
22 (“declaration”), 4185 (“separate interest”).

23 **§ 4615. Lien for work performed in condominium project**

24 4615. (a) In a condominium project, no labor performed or services or materials
25 furnished with the consent of, or at the request of, an owner in the condominium
26 project or the owners’ agent or contractor shall be the basis for the filing of a lien
27 against any other property of any other owner in the condominium project unless
28 that other owner has expressly consented to or requested the performance of the
29 labor or furnishing of the materials or services. However, express consent shall be
30 deemed to have been given by the owner of any condominium in the case of
31 emergency repairs thereto.

32 (b) Labor performed or services or materials furnished for the common area, if
33 duly authorized by the association, shall be deemed to be performed or furnished
34 with the express consent of each condominium owner.

35 (c) The owner of any condominium may remove that owner’s condominium
36 from a lien against two or more condominiums or any part thereof by payment to
37 the holder of the lien of the fraction of the total sum secured by the lien that is
38 attributable to the owner’s condominium.

39 **Comment.** Section 4615 continues former Section 1369 without change, except as indicated
40 below.

41 The following nonsubstantive changes were made:

- 42 • The provision was divided into subdivisions for ease of reference.
- 43 • The words “his or her” were replaced with “owner” throughout.

- See also Sections 4080 (“association”), 4095 (“common area”), 4125 (“condominium project”).

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1 **§ 4640. Stock cooperative**

2 4640. In a stock cooperative, any conveyance, judicial sale, or other voluntary or
3 involuntary transfer of the separate interest includes the ownership interest in the
4 corporation, however evidenced. Any conveyance, judicial sale, or other voluntary
5 or involuntary transfer of the owner's entire estate also includes the owner's
6 membership interest in the association.

7 **Comment.** Section 4640 continues former Section 1358(d) without change.

8 See also Sections 4080 ("association"), 4185 ("separate interest"), 4190 ("stock cooperative").

9 **§ 4645. Transfer of exclusive use common area**

10 4645. Nothing in this article prohibits the transfer of exclusive use areas,
11 independent of any other interest in a common interest subdivision, if
12 authorization to separately transfer exclusive use areas is expressly stated in the
13 declaration and the transfer occurs in accordance with the terms of the declaration.

14 **Comment.** Section 4645 continues the next to last paragraph of former Section 1358 without
15 change, except as indicated below.

16 The following nonsubstantive change was made:

- 17 • "Section" was replaced with "article."

18 See also Section 4135 ("declaration").

19 **§ 4650. Severability of interests**

20 4650. Any restrictions upon the severability of the component interests in real
21 property which are contained in the declaration shall not be deemed conditions
22 repugnant to the interest created within the meaning of Section 711. However,
23 these restrictions shall not extend beyond the period in which the right to partition
24 a project is suspended under Section 4610.

25 **Comment.** Section 4650 continues the last paragraph of former Section 1358 without change,
26 except as indicated below.

27 The following nonsubstantive changes were made:

- 28 • A superfluous reference to the "Civil Code" was not continued.
29 • The cross-reference was updated to reflect the new location of the referenced provision.

30 See also Section 4135 ("declaration").

31 **CHAPTER 5. PROPERTY USE AND MAINTENANCE**

32 **Article 1. Use of Separate Interest**

33 **§ 4700. Application of article**

34 4700. This article includes provisions that limit the authority of an association or
35 the governing documents to regulate the use of a member's separate interest.
36 Nothing in this article is intended to affect the application of any other provision
37 that limits the authority of an association to regulate the use of a member's
38 separate interest, including, but not limited to, the following provisions:

- 39 (a) Sections 712 and 713, relating to the display of signs.

1 (b) Sections 714 and 714.1, relating to solar energy systems.

2 (c) Section 714.5, relating to structures that are constructed offsite and moved to
3 the property in sections or modules.

4 (d) Sections 782, 782.5, and 6150 of this code and Section 12956.1 of the
5 Government Code, relating to racial restrictions.

6 (e) Section 12927 of the Government Code, relating to the modification of
7 property to accommodate a disability.

8 (f) Section 1597.40 of the Health and Safety Code, relating to the operation of a
9 family day care home.

10 **Comment.** Section 4700 is new. It provides a non-exclusive list of provisions outside of this
11 act that limit the authority of an association to regulate separate interest property use.

12 See also Sections 4080 (“association”), 4150 (“governing documents”), 4160 (“member”),
13 4185 (“separate interest”).

14 **§ 4705. Display of U.S. flag**

15 4705. (a) Except as required for the protection of the public health or safety, no
16 declaration or other governing document shall limit or prohibit, or be construed to
17 limit or prohibit, the display of the flag of the United States by a member on or in
18 the member’s separate interest or within the member’s exclusive use common
19 area.

20 (b) For purposes of this section, “display of the flag of the United States” means
21 a flag of the United States made of fabric, cloth, or paper displayed from a staff or
22 pole or in a window, and does not mean a depiction or emblem of the flag of the
23 United States made of lights, paint, roofing, siding, paving materials, flora, or
24 balloons, or any other similar building, landscaping, or decorative component.

25 (c) In any action to enforce this section, the prevailing party shall be awarded
26 reasonable attorney’s fees and costs.

27 **Comment.** Section 4705 continues former Section 1353.5 without change, except as indicated
28 below.

29 The following nonsubstantive changes were made:

- 30 • A superfluous cross-reference to governing definitions was not continued.
31 • The word “owner” was replaced with “member.” See Section 4160 (“member”).

32 See also Sections 4095 (“common area”), 4135 (“declaration”), 4145 (“exclusive use common
33 area”), 4185 (“separate interest”).

34 **§ 4710. Noncommercial sign**

35 4710. (a) The governing documents may not prohibit posting or displaying of
36 noncommercial signs, posters, flags, or banners on or in a member’s separate
37 interest, except as required for the protection of public health or safety or if the
38 posting or display would violate a local, state, or federal law.

39 (b) For purposes of this section, a noncommercial sign, poster, flag, or banner
40 may be made of paper, cardboard, cloth, plastic, or fabric, and may be posted or
41 displayed from the yard, window, door, balcony, or outside wall of the separate
42 interest, but may not be made of lights, roofing, siding, paving materials, flora, or

1 balloons, or any other similar building, landscaping, or decorative component, or
2 include the painting of architectural surfaces.

3 (c) An association may prohibit noncommercial signs and posters that are more
4 than nine square feet in size and noncommercial flags or banners that are more
5 than 15 square feet in size.

6 **Comment.** Section 4710 continues former Section 1353.6 without change, except as indicated
7 below.

8 The following nonsubstantive changes were made:

- 9 • The words “including the operating rules” were not continued.
- 10 • The word “owner” was replaced with “member.” See Section 4160 (“member”).
- 11 • In subdivision (c), the numeral “9” was replaced with “nine” for stylistic reasons.

12 See also Sections 4080 (“association”), 4150 (“governing documents”), 4185 (“separate
13 interest”).

14 § 4715. Pets

15 4715. (a) No governing documents shall prohibit the owner of a separate interest
16 within a common interest development from keeping at least one pet within the
17 common interest development, subject to reasonable rules and regulations of the
18 association. This section may not be construed to affect any other rights provided
19 by law to an owner of a separate interest to keep a pet within the development.

20 (b) For purposes of this section, “pet” means any domesticated bird, cat, dog,
21 aquatic animal kept within an aquarium, or other animal as agreed to between the
22 association and the homeowner.

23 (c) If the association implements a rule or regulation restricting the number of
24 pets an owner may keep, the new rule or regulation shall not apply to prohibit an
25 owner from continuing to keep any pet that the owner currently keeps in the
26 owner’s separate interest if the pet otherwise conforms with the previous rules or
27 regulations relating to pets.

28 (d) For the purposes of this section, “governing documents” shall include, but
29 are not limited to, the conditions, covenants, and restrictions of the common
30 interest development, and the bylaws, rules, and regulations of the association.

31 (e) This section shall become operative on January 1, 2001, and shall only apply
32 to governing documents entered into, amended, or otherwise modified on or after
33 that date.

34 **Comment.** Section 4715 continues former Section 1360.5 without change, except as indicated
35 below.

36 The following nonsubstantive change was made:

- 37 • “His or her” was replaced with “the owner’s” in subdivision (c).

38 See also Sections 4080 (“association”), 4100 (“common interest development”), 4150
39 (“governing documents”), 4185 (“separate interest”).

1 **§ 4720. Roofing materials**

2 4720. (a) No common interest development may require a homeowner to install
3 or repair a roof in a manner that is in violation of Section 13132.7 of the Health
4 and Safety Code.

5 (b) Governing documents of a common interest development located within a
6 very high fire severity zone, as designated by the Director of Forestry and Fire
7 Protection pursuant to Article 9 (commencing with Section 4201) of Chapter 1 of
8 Part 2 of Division 4 of the Public Resources Code or by a local agency pursuant to
9 Chapter 6.8 (commencing with Section 51175) of Part 1 of Division 1 of Title 5 of
10 the Government Code, shall allow for at least one type of fire retardant roof
11 covering material that meets the requirements of Section 13132.7 of the Health
12 and Safety Code.

13 **Comment.** Section 4720 continues former Section 1353.7 without change. See also Section
14 4765(a)(3) (“Notwithstanding a contrary provision of the governing documents, a decision on a
15 proposed change may not violate any governing provision of law, including, but not limited to,
16 the Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3
17 of Title 2 of the Government Code), or a building code or other applicable law governing land use
18 or public safety.”).

19 See also Sections 4100 (“common interest development”), 4150 (“governing documents”).

20 **§ 4725. Television antenna or satellite dish**

21 4725. (a) Any covenant, condition, or restriction contained in any deed, contract,
22 security instrument, or other instrument affecting the transfer or sale of, or any
23 interest in, a common interest development that effectively prohibits or restricts
24 the installation or use of a video or television antenna, including a satellite dish, or
25 that effectively prohibits or restricts the attachment of that antenna to a structure
26 within that development where the antenna is not visible from any street or
27 common area, except as otherwise prohibited or restricted by law, is void and
28 unenforceable as to its application to the installation or use of a video or television
29 antenna that has a diameter or diagonal measurement of 36 inches or less.

30 (b) This section shall not apply to any covenant, condition, or restriction, as
31 described in subdivision (a), that imposes reasonable restrictions on the
32 installation or use of a video or television antenna, including a satellite dish, that
33 has a diameter or diagonal measurement of 36 inches or less. For purposes of this
34 section, “reasonable restrictions” means those restrictions that do not significantly
35 increase the cost of the video or television antenna system, including all related
36 equipment, or significantly decrease its efficiency or performance and include all
37 of the following:

38 (1) Requirements for application and notice to the association prior to the
39 installation.

40 (2) Requirement of a member to obtain the approval of the association for the
41 installation of a video or television antenna that has a diameter or diagonal
42 measurement of 36 inches or less on a separate interest owned by another.

1 (3) Provision for the maintenance, repair, or replacement of roofs or other
2 building components.

3 (4) Requirements for installers of a video or television antenna to indemnify or
4 reimburse the association or its members for loss or damage caused by the
5 installation, maintenance, or use of a video or television antenna that has a
6 diameter or diagonal measurement of 36 inches or less.

7 (c) Whenever approval is required for the installation or use of a video or
8 television antenna, including a satellite dish, the application for approval shall be
9 processed by the appropriate approving entity for the common interest
10 development in the same manner as an application for approval of an architectural
11 modification to the property, and the issuance of a decision on the application shall
12 not be willfully delayed.

13 (d) In any action to enforce compliance with this section, the prevailing party
14 shall be awarded reasonable attorney's fees.

15 **Comment.** Section 4725 continues former Section 1376 without change, except as indicated
16 below.

17 The following nonsubstantive change was made:

- 18 • The word "owner" was replaced with "member." See Section 4160 ("member"). See
19 also 47 C.F.R. § 1.4000.

20 See also Sections 4080 ("association"), 4095 ("common area"), 4100 ("common interest
21 development"), 4185 ("separate interest").

22 § 4730. Marketing restriction

23 4730. (a) Any provision of a governing document that arbitrarily or
24 unreasonably restricts an owner's ability to market the owner's interest in a
25 common interest development is void.

26 (b) No association may adopt, enforce, or otherwise impose any governing
27 document that does either of the following:

28 (1) Imposes an assessment or fee in connection with the marketing of an
29 owner's interest in an amount that exceeds the association's actual or direct costs.
30 That assessment or fee shall be deemed to violate the limitation set forth in
31 subdivision (b) of Section 5600.

32 (2) Establishes an exclusive relationship with a real estate broker through which
33 the sale or marketing of interests in the development is required to occur. The
34 limitation set forth in this paragraph does not apply to the sale or marketing of
35 separate interests owned by the association or to the sale or marketing of common
36 area by the association.

37 (c) For purposes of this section, "market" and "marketing" mean listing,
38 advertising, or obtaining or providing access to show the owner's interest in the
39 development.

40 (d) This section does not apply to rules or regulations made pursuant to Section
41 712 or 713 regarding real estate signs.

42 **Comment.** Section 4730 continues former Section 1368.1 without change, except as indicated
43 below.

1 The following substantive changes were made:

- 2 • The introductory clause was revised to make clear that a void provision does not void
- 3 the entire governing document that contains it.
- 4 • The words “rule or regulation” were replaced with “governing document.” This
- 5 broadens the application of the section so that it governs any provision in the governing
- 6 documents and not just an operating rule.

7 The following nonsubstantive changes were made:

- 8 • The words “his or her” were replaced with “the owner’s” in subdivision (a).
- 9 • The words “common areas” were singularized.
- 10 • The words “of an association” were not continued.

11 See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest

12 development”), 4185 (“separate interest”).

13 **§ 4735. Low water-using plants**

14 4735. (a) Notwithstanding any other law, a provision of the governing

15 documents shall be void and unenforceable if it does any of the following:

16 (1) Prohibits, or includes conditions that have the effect of prohibiting, the use

17 of low water-using plants as a group.

18 (2) Has the effect of prohibiting or restricting compliance with either of the

19 following:

20 (A) A water-efficient landscape ordinance adopted or in effect pursuant to

21 subdivision (c) of Section 65595 of the Government Code.

22 (B) Any regulation or restriction on the use of water adopted pursuant to Section

23 353 or 375 of the Water Code.

24 (b) This section shall not prohibit an association from applying landscaping

25 rules established in the governing documents, to the extent the rules fully conform

26 with the requirements of subdivision (a).

27 **Comment.** Section 4735 continues former Section 1353.8 without change, except as indicated

28 below.

29 The following nonsubstantive change was made:

- 30 • Surplus language was not continued (i.e., the phrases “of any,” “of a common interest
- 31 development,” and “and regulations”). The term “governing documents” includes all
- 32 governing documents of a common interest development. See Section 4150
- 33 (“governing documents”).

34 See also Section 4080 (“association”).

35 **Article 2. Modification of Separate Interest**

36 **§ 4760. Improvements to separate interest**

37 4760. (a) Subject to the governing documents and applicable law, a member

38 may do the following:

39 (1) Make any improvement or alteration within the boundaries of the member’s

40 separate interest that does not impair the structural integrity or mechanical systems

41 or lessen the support of any portions of the common interest development.

(2) Modify the member's separate interest, at the member's expense, to facilitate access for persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions which could be hazardous to these persons. These modifications may also include modifications of the route from the public way to the door of the separate interest for the purposes of this paragraph if the separate interest is on the ground floor or already accessible by an existing ramp or elevator. The right granted by this paragraph is subject to the following conditions:

(A) The modifications shall be consistent with applicable building code requirements.

(B) The modifications shall be consistent with the intent of otherwise applicable provisions of the governing documents pertaining to safety or aesthetics.

(C) Modifications external to the dwelling shall not prevent reasonable passage by other residents, and shall be removed by the member when the separate interest is no longer occupied by persons requiring those modifications who are blind, visually handicapped, deaf, or physically disabled.

(D) Any member who intends to modify a separate interest pursuant to this paragraph shall submit plans and specifications to the association for review to determine whether the modifications will comply with the provisions of this paragraph. The association shall not deny approval of the proposed modifications under this paragraph without good cause.

(b) Any change in the exterior appearance of a separate interest shall be in accordance with the governing documents and applicable provisions of law.

Comment. Section 4760 continues former Section 1360 without change, except as indicated below.

The following substantive change was made:

- The scope of the provision was broadened to apply to any separate interest, and not just a unit in a condominium project.

The following nonsubstantive changes were made:

- The words "his or her" were not continued in subdivision (a)(2)(D).
- The word "owner" was replaced with "member" throughout. See Section 4160 ("member").

See also Section 4765 (association decision on modification of separate interest must comply with Fair Employment and Housing Act); Gov't Code § 12927 (accommodation of disability under Fair Employment and Housing Act).

See also Sections 4080 ("association"), 4100 ("common interest development"), 4150 ("governing documents"), 4185 ("separate interest").

§ 4765. Architectural review and decision making

4765. (a) This section applies if the governing documents require association approval before a member may make a physical change to the member's separate interest or to the common area. In reviewing and approving or disapproving a proposed change, the association shall satisfy the following requirements:

(1) The association shall provide a fair, reasonable, and expeditious procedure for making its decision. The procedure shall be included in the association's

governing documents. The procedure shall provide for prompt deadlines. The procedure shall state the maximum time for response to an application or a request for reconsideration by the board.

(2) A decision on a proposed change shall be made in good faith and may not be unreasonable, arbitrary, or capricious.

(3) Notwithstanding a contrary provision of the governing documents, a decision on a proposed change may not violate any governing provision of law, including, but not limited to, the Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), or a building code or other applicable law governing land use or public safety.

(4) A decision on a proposed change shall be in writing. If a proposed change is disapproved, the written decision shall include both an explanation of why the proposed change is disapproved and a description of the procedure for reconsideration of the decision by the board.

(5) If a proposed change is disapproved, the applicant is entitled to reconsideration by the board, at an open meeting of the board. This paragraph does not require reconsideration of a decision that is made by the board or a body that has the same membership as the board, at a meeting that satisfies the requirements of Article 2 (commencing with Section 4900) of Chapter 6. Reconsideration by the board does not constitute dispute resolution within the meaning of Section 5905.

(b) Nothing in this section authorizes a physical change to the common area in a manner that is inconsistent with an association's governing documents, unless the change is required by law.

(c) An association shall annually provide its members with notice of any requirements for association approval of physical changes to property. The notice shall describe the types of changes that require association approval and shall include a copy of the procedure used to review and approve or disapprove a proposed change.

Comment. Section 4765 continues former Section 1378 without change, except as indicated below.

The following nonsubstantive changes were made:

- The words "board of directors" and "board of directors of the association" were replaced with "board." See Sections 4085 ("board").
- A reference to the "association's" governing documents was not continued. See Section 4150 ("governing documents").
- The word "owner" was replaced with "member." See Section 4160 ("member").

See also Sections 4080 ("association"), 4095 ("common area"), 4185 ("separate interest").

Article 3. Maintenance

§ 4775. Maintenance responsibility generally

4775. (a) Unless otherwise provided in the declaration of a common interest development, the association is responsible for repairing, replacing, or maintaining the common area, other than exclusive use common area, and the owner of each

1 separate interest is responsible for maintaining that separate interest and any
2 exclusive use common area appurtenant to the separate interest.

3 (b) The costs of temporary relocation during the repair and maintenance of the
4 areas within the responsibility of the association shall be borne by the owner of the
5 separate interest affected.

6 **Comment.** Subdivision (a) of Section 4775 continues former Section 1364(a) without change,
7 except as indicated below.

8 The following nonsubstantive change was made:

- 9 • The words “common areas” were singularized.

10 Subdivision (b) continues former Section 1364(c) without change.

11 See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest
12 development”), 4135 (“declaration”), 4145 (“exclusive use common area”), 4185 (“separate
13 interest”).

14 **§ 4780. Wood-destroying pests or organisms**

15 4780. (a) In a community apartment project, condominium project, or stock
16 cooperative, unless otherwise provided in the declaration, the association is
17 responsible for the repair and maintenance of the common area occasioned by the
18 presence of wood-destroying pests or organisms.

19 (b) In a planned development, unless a different maintenance scheme is
20 provided in the declaration, each owner of a separate interest is responsible for the
21 repair and maintenance of that separate interest as may be occasioned by the
22 presence of wood-destroying pests or organisms. Upon approval of the majority of
23 all members of the association, pursuant to Section 4065, that responsibility may
24 be delegated to the association, which shall be entitled to recover the cost thereof
25 as a special assessment.

26 **Comment.** Subdivision (a) of Section 4780 continues former Section 1364(b)(1) without
27 change, except as indicated below.

28 The following nonsubstantive change was made:

- 29 • A superfluous cross-reference to governing definitions was not continued.

30 Subdivision (b) continues former Section 1364(b)(2) without change, except as indicated
31 below.

32 The following nonsubstantive changes were made:

- 33 • A superfluous cross-reference to a governing definition was not continued.
34 • A cross-reference to Section 4065 was added.
35 • The last sentence was revised to avoid use of the word “such.”

36 See also Sections 4080 (“association”), 4095 (“common area”), 4105 (“community apartment
37 project”), 4125 (“condominium project”), 4135 (“declaration”), 4160 (“member”), 4175
38 (“planned development”), 4185 (“separate interest”), 4190 (“stock cooperative”).

39 **§ 4785. Temporary removal of occupant to perform treatment of wood-destroying pests**

40 4785. (a) The association may cause the temporary, summary removal of any
41 occupant of a common interest development for such periods and at such times as
42 may be necessary for prompt, effective treatment of wood-destroying pests or
43 organisms.

(b) The association shall give notice of the need to temporarily vacate a separate interest to the occupants and to the owners, not less than 15 days nor more than 30 days prior to the date of the temporary relocation. The notice shall state the reason for the temporary relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment, and that the occupants will be responsible for their own accommodations during the temporary relocation.

(c) Notice by the association shall be deemed complete upon either:

(1) Personal delivery of a copy of the notice to the occupants, and if an occupant is not the owner, individual delivery pursuant to Section 4040, of a copy of the notice to the owner.

(2) Individual delivery pursuant to Section 4040 to the occupant at the address of the separate interest, and if the occupant is not the owner, individual delivery pursuant to Section 4040, of a copy of the notice to the owner.

(d) For purposes of this section, “occupant” means an owner, resident, guest, invitee, tenant, lessee, sublessee, or other person in possession on the separate interest.

Comment. Section 4785 continues former Section 1364(d)-(e) without change, except as indicated below.

The following substantive change was made:

- The provision was revised to incorporate the “individual delivery” notice procedure.

The following nonsubstantive change was made:

- Subdivision (c) was revised to improve its clarity.

See also Sections 4080 (“association”), 4100 (“common interest development”), 4185 (“separate interest”).

§ 4790. Exclusive use communication wiring

4790. Notwithstanding the provisions of the declaration, a member is entitled to reasonable access to the common area for the purpose of maintaining the internal and external telephone wiring made part of the exclusive use common area of the member’s separate interest pursuant to subdivision (c) of Section 4145. The access shall be subject to the consent of the association, whose approval shall not be unreasonably withheld, and which may include the association’s approval of telephone wiring upon the exterior of the common area, and other conditions as the association determines reasonable.

Comment. Section 4790 continues former Section 1364(f) without change, except as indicated below.

The following nonsubstantive changes were made:

- A cross-reference was updated to reflect the new location of the referenced provision.
- The word “owner” was replaced with “member.” See Section 4160 (“member”).
- The words “common areas” were singularized.

See also Sections 4080 (“association”), 4095 (“common area”), 4135 (“declaration”), 4145 (“exclusive use common area”), 4185 (“separate interest”).

CHAPTER 6. ASSOCIATION GOVERNANCE

Article 1. Association Existence and Powers

§ 4800. Association

4800. A common interest development shall be managed by an association that may be incorporated or unincorporated. The association may be referred to as an owners' association or a community association.

Comment. Section 4800 continues former Section 1363(a) without change, except as indicated below.

The following nonsubstantive change was made:

- Use of the term "owners' association" to describe the association is expressly authorized.

See also Sections 4080 ("association"), 4100 ("common interest development").

§ 4805. Association powers

4805. (a) Unless the governing documents provide otherwise, and regardless of whether the association is incorporated or unincorporated, the association may exercise the powers granted to a nonprofit mutual benefit corporation, as enumerated in Section 7140 of the Corporations Code, except that an unincorporated association may not adopt or use a corporate seal or issue membership certificates in accordance with Section 7313 of the Corporations Code.

(b) The association, whether incorporated or unincorporated, may exercise the powers granted to an association in this act.

Comment. Section 4805 continues former Section 1363(c) without change, except as indicated below.

The following nonsubstantive changes were made:

- The provision was divided into subdivisions for ease of reference.
- The word "title" was replaced with "act."

See also Sections 4080 ("association"), 4150 ("governing documents").

§ 4820. Joint neighborhood association

4820. Whenever two or more associations have consolidated any of their functions under a joint neighborhood association or similar organization, members of each participating association shall be (a) entitled to attend all meetings of the joint association other than executive sessions, (b) given reasonable opportunity for participation in those meetings, and (c) entitled to the same access to the joint association's records as they are to the participating association's records.

Comment. Section 4820 continues former Section 1363(i) without change.

See also Sections 4080 ("association"), 4160 ("member").

Article 2. Board Meeting

§ 4900. Short title

4900. This article shall be known and may be cited as the Common Interest Development Open Meeting Act.

Comment. Section 4900 continues former Section 1363.05(a) without change, except as indicated below.

The following nonsubstantive change was made:

- The word “section” was replaced with “article.”

§ 4920. Notice of board meeting

4920. Unless the governing documents provide for a longer period of notice, members shall be given notice of the time and place of a board meeting, except for an emergency meeting held pursuant to Section 4923, at least four days prior to the meeting. Notice shall be given by general delivery pursuant to Section 4045. The notice shall contain the agenda for the meeting.

Comment. Section 4920 continues former Section 1363.05(f) without change, except as indicated below.

The following substantive changes were made:

- An exception for an association with a fixed meeting schedule was not continued.
- Specific rules on delivery of notice were replaced with a functionally equivalent requirement that notice be given by “general delivery,” pursuant to Section 4045.

The following nonsubstantive changes were made:

- The word “meeting” as replaced with “board meeting.” See Section 4090 (“board meeting”).
- The word “bylaws” was replaced with “governing documents,” to broaden the scope of the provision.
- A reference was added to Section 4923, which continues the emergency meeting provisions of former Section 1363.05(g).

See also Sections 4080 (“association”), 4150 (“governing documents”), 4160 (“member”).

§ 4923. Emergency board meeting

4923. An emergency board meeting may be called by the president of the association, or by any two directors other than the president, if there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the board, and which of necessity make it impracticable to provide notice as required by Section 4920.

Comment. Section 4923 continues the substance of former Section 1363.05(g), except as indicated below.

The following nonsubstantive changes were made:

- “Board member” was replaced with “director.” See Section 4140 (“director”).
- The words “meeting of the board” were replaced with “board meeting.” See Section 4090 (“board meeting”).

See also Sections 4080 (“association”), 4085 (“board”).

1 **§ 4925. Board meeting open**

2 4925. (a) Any member may attend board meetings, except when the board
3 adjourns to executive session.

4 (b) The board shall permit any member to speak at any meeting of the
5 association or the board, except for meetings of the board held in executive
6 session. A reasonable time limit for all members of the association to speak to the
7 board or before a meeting of the association shall be established by the board.

8 **Comment.** Subdivision (a) of Section 4925 continues the substance of part of the first sentence
9 of former Section 1363.05(b), except as indicated below.

10 The following nonsubstantive changes were made:

- 11 • The words “meetings of the board of directors of the association” were replaced with
12 “board meetings.” See Section 4090 (“board meeting”).
- 13 • Subdivision (a) does not continue language specifying when a board may meet in
14 executive session. The substance of that language was continued in Section 4935.
- 15 • The words “member of the association” were replaced with “member.” See Section
16 4160 (“member”).

17 Subdivision (b) continues former Section 1363.05(h) without change, except as indicated
18 below.

19 The following nonsubstantive change was made:

- 20 • The words “board of directors” and “board of directors of the association” were
21 replaced with “board.” See Section 4085 (“board”).

22 See also Section 4080 (“association”).

23 **§ 4930. Limitation on meeting content**

24 4930. (a) Except as described in subdivisions (b) to (e), inclusive, the board may
25 not discuss or take action on any item at a nonemergency meeting unless the item
26 was placed on the agenda included in the notice that was distributed pursuant to
27 subdivision (a) of Section 4920. This subdivision does not prohibit a member or
28 resident who is not a director from speaking on issues not on the agenda.

29 (b) Notwithstanding subdivision (a), a director, a managing agent or other agent
30 of the board, or a member of the staff of the board, may do any of the following:

31 (1) Briefly respond to statements made or questions posed by a person speaking
32 at a meeting as described in subdivision (b) of Section 4925.

33 (2) Ask a question for clarification, make a brief announcement, or make a brief
34 report on the person’s own activities, whether in response to questions posed by a
35 member or based upon the person’s own initiative.

36 (c) Notwithstanding subdivision (a), the board or a director, subject to rules or
37 procedures of the board, may do any of the following:

38 (1) Provide a reference to, or provide other resources for factual information to,
39 its managing agent or other agents or staff.

40 (2) Request its managing agent or other agents or staff to report back to the
41 board at a subsequent meeting concerning any matter, or take action to direct its
42 managing agent or other agents or staff to place a matter of business on a future
43 agenda.

1 (3) Direct its managing agent or other agents or staff to perform administrative
2 tasks that are necessary to carry out this section.

3 (d) Notwithstanding subdivision (a), the board may take action on any item of
4 business not appearing on the agenda distributed pursuant to subdivision (a) of
5 Section 4920 under any of the following conditions:

6 (1) Upon a determination made by a majority of the board present at the meeting
7 that an emergency situation exists. An emergency situation exists if there are
8 circumstances that could not have been reasonably foreseen by the board, that
9 require immediate attention and possible action by the board, and that, of
10 necessity, make it impracticable to provide notice.

11 (2) Upon a determination made by the board by a vote of two-thirds of the
12 directors present at the meeting, or, if less than two-thirds of total membership of
13 the board is present at the meeting, by a unanimous vote of the directors present,
14 that there is a need to take immediate action and that the need for action came to
15 the attention of the board after the agenda was distributed pursuant to subdivision
16 (a) of Section 4920.

17 (3) The item appeared on an agenda that was distributed pursuant to subdivision
18 (a) of Section 4920 for a prior meeting of the board that occurred not more than 30
19 calendar days before the date that action is taken on the item and, at the prior
20 meeting, action on the item was continued to the meeting at which the action is
21 taken.

22 (e) Before discussing any item pursuant to subdivision (d), the board shall
23 openly identify the item to the members in attendance at the meeting.

24 **Comment.** Section 4930 continues former Section 1363.05(i) without change, except as
25 indicated below.

26 The following nonsubstantive changes were made:

- 27 • References to “posting” of notice were not continued. Section 4920 does not require
28 that notice be “posted.”
- 29 • The numbering of the paragraphs of the former provision was simplified.
- 30 • Statutory references were updated to reflect the new location of the referenced
31 provision.
- 32 • In subdivision (b)(2), the words “his or her” were replaced with “the person’s.”
- 33 • Subdivision (d)(2) was revised to make clear that the “members” referenced in that
34 paragraph are members of the board.
- 35 • The words “board of directors” were replaced throughout with “board.” See Section
36 4085 (“board”).
- 37 • The words “board member” were replaced with “director” throughout. See Section
38 4140 (“director”).
- 39 • The word “member” was added to the second sentence of subdivision (a) to make clear
40 that the section applies to nonresident members. See Section 4160 (“member”).

41 See also Section 4155 (“managing agent”).

42 § 4935. Executive session

43 4935. (a) The board may adjourn to executive session to consider litigation,
44 matters relating to the formation of contracts with third parties, member discipline,

1 personnel matters, or to meet with a member, upon the member's request,
2 regarding the member's payment of assessments, as specified in Section 5665.

3 (b) The board shall meet in executive session to discuss member discipline, if
4 requested by the member who is the subject of the discussion. That member shall
5 be entitled to attend the executive session.

6 (c) The board shall meet in executive session to discuss a payment plan pursuant
7 to Section 5665.

8 (d) The board shall meet in executive session to decide whether to foreclose on a
9 lien pursuant to subdivision (b) of Section 5705.

10 (e) Any matter discussed in executive session shall be generally noted in the
11 minutes of the immediately following meeting that is open to the entire
12 membership.

13 **Comment.** Subdivision (a) of Section 4935 continues the substance of part of the first sentence
14 of former Section 1363.05(b). The substance of the remainder of the former sentence is continued
15 in Section 4925(a).

16 Subdivision (b) continues the substance of the second sentence of former Section 1363.05(b).

17 Subdivision (c) is new. It provides a cross-reference to a provision requiring that the board
18 meet in executive session when discussing a proposed payment plan.

19 Subdivision (d) is new. It provides a cross-reference to a provision requiring that the board
20 meet in executive session when deciding whether to foreclose on a lien for overdue assessments.

21 Subdivision (e) continues former Section 1363.05(c) without change.

22 See also Sections 4085 ("board"), 4160 ("member").

23 § 4950. Minutes

24 4950. (a) The minutes, minutes proposed for adoption that are marked to
25 indicate draft status, or a summary of the minutes, of any board meeting, other
26 than an executive session, shall be available to members within 30 days of the
27 meeting. The minutes, proposed minutes, or summary minutes shall be distributed
28 to any member upon request and upon reimbursement of the association's costs for
29 making that distribution.

30 (b) The annual policy statement, prepared pursuant to Section 5310, shall inform
31 the members of their right to obtain copies of board meeting minutes and of how
32 and where to do so.

33 **Comment.** Subdivision (a) of Section 4950 continues former Section 1363.05(d) without
34 change, except as indicated below.

35 The following nonsubstantive changes were made:

- 36 • The words "any meeting of the board of directors of the association" were replaced
37 with "board meeting." See Section 4090 ("board meeting").
- 38 • The words "member of the association" were replaced with "member." See Section
39 4160 ("member").

40 Subdivision (b) is consistent with the substance of former Section 1363.05(e), but recasts it to
41 be consistent with the annual distribution of the policy statement pursuant to Section 5310.

42 See also Section 4080 ("association").

§ 4955. Civil action to enforce article

4955. (a) A member of an association may bring a civil action for declaratory or equitable relief for a violation of this article by the association, including, but not limited to, injunctive relief, restitution, or a combination thereof, within one year of the date the cause of action accrues.

(b) A member who prevails in a civil action to enforce the member's rights pursuant to this article shall be entitled to reasonable attorney's fees and court costs, and the court may impose a civil penalty of up to five hundred dollars (\$500) for each violation, except that each identical violation shall be subject to only one penalty if the violation affects each member equally. A prevailing association shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

Comment. Section 4955 continues former Section 1363.09(a)-(b) without change, except as indicated below.

The following nonsubstantive changes were made:

- The words “an association of which he or she is a member” were replaced with “the association.”
- The second sentence of former Section 1363.09(a) was not continued because it is irrelevant to judicial enforcement of this article.
- The words “his or her” were replaced with “the member’s.”
- The words “member of the association” were replaced with “member.” See Section 4160 (“member”).

See also Section 4080 (“association”).

Article 3. Member Meeting

§ 5000. Member meeting

5000. (a) Meetings of the membership of the association shall be conducted in accordance with a recognized system of parliamentary procedure or any parliamentary procedures the association may adopt.

(b) Notwithstanding any other provision of law, notice of meetings of the members shall specify those matters the board intends to present for action by the members, but, except as otherwise provided by law, any proper matter may be presented at the meeting for action.

(c) The board shall permit any member to speak at any meeting of the membership of the association. A reasonable time limit for all members to speak at a meeting of the association shall be established by the board.

Comment. Subdivision (a) of Section 5000 continues former Section 1363(d) without change.

Subdivision (b) continues former Section 1363(e) without change.

Subdivision (c) continues the substance of former Section 1363.05(h), as that provision applied to member meetings.

See also Sections 4080 (“association”), 4085 (“board”), 4160 (“member”).

Article 4. Member Election

§ 5100. Application of article

5100. (a) Notwithstanding any other law or provision of the governing documents, elections regarding assessments legally requiring a vote, election and removal of directors, amendments to the governing documents, or the grant of exclusive use of common area pursuant to Section 4600 shall be held by secret ballot in accordance with the procedures set forth in this article.

(b) This article also governs an election on any topic that is expressly identified in the operating rules as being governed by this article.

(c) The provisions of this article apply to both incorporated and unincorporated associations, notwithstanding any contrary provision of the governing documents.

(d) The procedures set forth in this article shall apply to votes cast directly by the membership, but do not apply to votes cast by delegates or other elected representatives.

(e) In the event of a conflict between this article and the provisions of the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code) relating to elections, the provisions of this article shall prevail.

Comment. Subdivision (a) of Section 5100 continues the first sentence of former Section 1363.03(b) without change, except as indicated below.

The following nonsubstantive changes were made:

- “Section” was replaced with “article.”
- A cross-reference was updated to reflect the new location of the referenced provision.
- “Association board of directors” was replaced with “board.” See Section 4085 (“board”).
- The words “board member” were replaced with “director.” See Section 4140 (“director”).
- The words “common area property” were replaced with “common area.”

Subdivision (b) is new. It permits an association to adopt an operating rule applying the requirements of this article to an election that would not otherwise be governed by this article.

Subdivisions (c)-(e) continue former Section 1363.03(l)-(n), respectively, without change, except as indicated below.

The following nonsubstantive change was made:

- The word “section” was replaced with “article” throughout.

Former Section 1363.03(o), stating the operative date of the former section, is obsolete and is not continued.

See also Sections 4080 (“association”), 4095 (“common area”), 4150 (“governing documents”).

§ 5105. Election rules

5105. (a) An association shall adopt rules, in accordance with the procedures prescribed by Article 5 (commencing with Section 4340) of Chapter 3, that do all of the following:

(1) Ensure that if any candidate or member advocating a point of view is provided access to association media, newsletters, or Internet Web sites during a

1 campaign, for purposes that are reasonably related to that election, equal access
2 shall be provided to all candidates and members advocating a point of view,
3 including those not endorsed by the board, for purposes that are reasonably related
4 to the election. The association shall not edit or redact any content from these
5 communications, but may include a statement specifying that the candidate or
6 member, and not the association, is responsible for that content.

7 (2) Ensure access to the common area meeting space, if any exists, during a
8 campaign, at no cost, to all candidates, including those who are not incumbents,
9 and to all members advocating a point of view, including those not endorsed by
10 the board, for purposes reasonably related to the election.

11 (3) Specify the qualifications for candidates for the board and any other elected
12 position, and procedures for the nomination of candidates, consistent with the
13 governing documents. A nomination or election procedure shall not be deemed
14 reasonable if it disallows any member from nominating himself or herself for
15 election to the board.

16 (4) Specify the qualifications for voting, the voting power of each membership,
17 the authenticity, validity, and effect of proxies, and the voting period for elections,
18 including the times at which polls will open and close, consistent with the
19 governing documents.

20 (5) Specify a method of selecting one or three independent third parties as
21 inspector or inspectors of elections utilizing one of the following methods:

22 (A) Appointment of the inspector or inspectors by the board.

23 (B) Election of the inspector or inspectors by the members of the association.

24 (C) Any other method for selecting the inspector or inspectors.

25 (6) Allow the inspector or inspectors to appoint and oversee additional persons
26 to verify signatures and to count and tabulate votes as the inspector or inspectors
27 deem appropriate, provided that the persons are independent third parties.

28 (b) Notwithstanding any other provision of law, the rules adopted pursuant to
29 this section may provide for the nomination of candidates from the floor of
30 membership meetings or nomination by any other manner. Those rules may permit
31 write-in candidates for ballots.

32 **Comment.** Subdivision (a) of Section 5105 continues former Section 1363.03(a) without
33 change, except as indicated below.

34 The following nonsubstantive changes were made:

- 35 • The words “board of directors” were replaced with “board.” See Section 4085
36 (“board”).
- 37 • The words “member of the association” were replaced with “member.” See Section
38 4160 (“member”).

39 Subdivision (b) continues former Section 1363.03(j) without change.

40 See also Sections 4080 (“association”), 4095 (“common area”), 4150 (“governing
41 documents”).

1 **§ 5110. Inspector of elections**

2 5110. (a) The association shall select an independent third party or parties as an
3 inspector of elections. The number of inspectors of elections shall be one or three.

4 (b) For the purposes of this section, an independent third party includes, but is
5 not limited to, a volunteer poll worker with the county registrar of voters, a
6 licensee of the California Board of Accountancy, or a notary public. An
7 independent third party may be a member, but may not be a director or a candidate
8 for director or be related to a director or to a candidate for director. An
9 independent third party may not be a person, business entity, or subdivision of a
10 business entity who is currently employed or under contract to the association for
11 any compensable services unless expressly authorized by rules of the association
12 adopted pursuant to paragraph (5) of subdivision (a) of Section 5105.

13 (c) The inspector or inspectors of elections shall do all of the following:

14 (1) Determine the number of memberships entitled to vote and the voting power
15 of each.

16 (2) Determine the authenticity, validity, and effect of proxies, if any.

17 (3) Receive ballots.

18 (4) Hear and determine all challenges and questions in any way arising out of or
19 in connection with the right to vote.

20 (5) Count and tabulate all votes.

21 (6) Determine when the polls shall close, consistent with the governing
22 documents.

23 (7) Determine the tabulated results of the election.

24 (8) Perform any acts as may be proper to conduct the election with fairness to all
25 members in accordance with this article, the Corporations Code, and all applicable
26 rules of the association regarding the conduct of the election that are not in conflict
27 with this article.

28 (d) An inspector of elections shall perform all duties impartially, in good faith,
29 to the best of the inspector of election's ability, and as expeditiously as is practical.
30 If there are three inspectors of elections, the decision or act of a majority shall be
31 effective in all respects as the decision or act of all. Any report made by the
32 inspector or inspectors of elections is prima facie evidence of the facts stated in the
33 report.

34 **Comment.** Section 5110 continues former Section 1363.03(c) without change, except as
35 indicated below.

36 The following nonsubstantive changes were made:

- 37 • "Section" was replaced with "article" throughout.
- 38 • A cross-reference was updated to reflect the new location of the referenced provision.
- 39 • The words "his or her" were replaced in subdivision (d).
- 40 • The second sentence of subdivision (b) was reworded to clarify its meaning.
- 41 • The words "board of directors" were replaced with "board." See Section 4085
- 42 ("board").
- 43 • The words "board member" was replaced with "director." See Section 4140
- 44 ("director").

- The words “member of the association” were replaced with “member.” See Section 4160 (“member”).

See also Sections 4080 (“association”), 4150 (“governing documents”).

§ 5115. Voting procedure

5115. (a) Ballots and two preaddressed envelopes with instructions on how to return ballots shall be mailed by first-class mail or delivered by the association to every member not less than 30 days prior to the deadline for voting. In order to preserve confidentiality, a voter may not be identified by name, address, or lot, parcel, or unit number on the ballot. The association shall use as a model those procedures used by California counties for ensuring confidentiality of vote by mail ballots, including all of the following:

(1) The ballot itself is not signed by the voter, but is inserted into an envelope that is sealed. This envelope is inserted into a second envelope that is sealed. In the upper left hand corner of the second envelope, the voter shall sign the voter’s name, indicate the voter’s name, and indicate the address or separate interest identifier that entitles the voter to vote.

(2) The second envelope is addressed to the inspector or inspectors of elections, who will be tallying the votes. The envelope may be mailed or delivered by hand to a location specified by the inspector or inspectors of elections. The member may request a receipt for delivery.

(b) A quorum shall be required only if so stated in the governing documents or other provisions of law. If a quorum is required by the governing documents, each ballot received by the inspector of elections shall be treated as a member present at a meeting for purposes of establishing a quorum.

(c) An association shall allow for cumulative voting using the secret ballot procedures provided in this section, if cumulative voting is provided for in the governing documents.

(d) Except for the meeting to count the votes required in subdivision (a) of Section 5120, an election may be conducted entirely by mail unless otherwise specified in the governing documents.

(e) In an election to approve an amendment of the governing documents, the text of the proposed amendment shall be delivered to the members with the ballot.

Comment. Subdivision (a) of Section 5115 continues former Section 1363.03(e) without change, except as indicated below.

The following nonsubstantive change was made:

- The words “his or her” were replaced throughout.

Subdivision (b) continues the second and third sentences of former Section 1363.03(b) without change, except as indicated below.

The following nonsubstantive change was made:

- The words “of the association” were not continued.

Subdivision (c) continues the fourth sentence of former Section 1363.03(b) without change.

Subdivision (d) continues former Section 1363.03(k) without change, except as indicated below.

1 The following nonsubstantive change was made:

- 2 • A cross-reference was updated to reflect the new location of the referenced provision.

3 Subdivision (e) is new. It generalizes part of former Section 1355(b)(1), which required
4 distribution of the text of a proposed amendment when amending the declaration.

5 See also Sections 4080 (“association”), 4150 (“governing documents”), 4160 (“member”),
6 4185 (“separate interest”).

7 **§ 5120. Counting ballots**

8 5120. (a) All votes shall be counted and tabulated by the inspector or inspectors
9 of elections, or the designee of the inspector of elections, in public at a properly
10 noticed open meeting of the board or members. Any candidate or other member of
11 the association may witness the counting and tabulation of the votes. No person,
12 including a member of the association or an employee of the management
13 company, shall open or otherwise review any ballot prior to the time and place at
14 which the ballots are counted and tabulated. The inspector of elections, or the
15 designee of the inspector of elections, may verify the member’s information and
16 signature on the outer envelope prior to the meeting at which ballots are tabulated.
17 Once a secret ballot is received by the inspector of elections, it shall be
18 irrevocable.

19 (b) The tabulated results of the election shall be promptly reported to the board
20 and shall be recorded in the minutes of the next meeting of the board and shall be
21 available for review by members of the association. Within 15 days of the
22 election, the board shall give general notice pursuant to Section 4045 of the
23 tabulated results of the election.

24 **Comment.** Section 5120 continues former Section 1363.03(f)-(g) without change, except as
25 indicated below.

26 The following substantive change was made:

- 27 • Ambiguous language requiring that election results be “publicized” was replaced with a
28 reference to the requirements for giving general notice pursuant to Section 4045.

29 The following nonsubstantive changes were made:

- 30 • The words “his or her designee” ere replaced with “the designee of the inspector of
31 elections” throughout.
32 • The words “board of directors” and “board of directors of the association” were
33 replaced with “board.” See Section 4085 (“board”).

34 See also Sections 4080 (“association”), 4160 (“member”).

35 **§ 5125. Ballot custody and inspection**

36 5125. (a) The sealed ballots at all times shall be in the custody of the inspector
37 or inspectors of elections or at a location designated by the inspector or inspectors
38 until after the tabulation of the vote, and until the time allowed by Section 5145
39 for challenging the election has expired, at which time custody shall be transferred
40 to the association. If there is a recount or other challenge to the election process,
41 the inspector or inspectors of elections shall, upon written request, make the
42 ballots available for inspection and review by an association member or the

1 member's authorized representative. Any recount shall be conducted in a manner
2 that preserves the confidentiality of the vote.

3 (b) After the transfer of the ballots to the association, the ballots shall be stored
4 by the association in a secure place for no less than one year after the date of the
5 election.

6 **Comment.** Section 5125 continues former Section 1363.03(h)-(i) without change, except as
7 indicated below.

8 The following substantive change was made:

- 9 • The reference to the time for filing an action under Corporations Code Section 7527
10 was replaced with a reference to the time for filing an action under Section 5145.

11 The following nonsubstantive change was made:

- 12 • The words "his or her" were replaced with "the members" in subdivision (a).

13 See also Sections 4080 ("association"), 4160 ("member").

14 § 5130. Proxies

15 5130. (a) For purposes of this article, the following definitions shall apply:

16 (1) "Proxy" means a written authorization signed by a member or the authorized
17 representative of the member that gives another member or members the power to
18 vote on behalf of that member.

19 (2) "Signed" means the placing of the member's name on the proxy (whether by
20 manual signature, typewriting, telegraphic transmission, or otherwise) by the
21 member or authorized representative of the member.

22 (b) Proxies shall not be construed or used in lieu of a ballot. An association may
23 use proxies if permitted or required by the bylaws of the association and if those
24 proxies meet the requirements of this article, other laws, and the governing
25 documents, but the association shall not be required to prepare or distribute
26 proxies pursuant to this article.

27 (c) Any instruction given in a proxy issued for an election that directs the
28 manner in which the proxyholder is to cast the vote shall be set forth on a separate
29 page of the proxy that can be detached and given to the proxyholder to retain. The
30 proxyholder shall cast the member's vote by secret ballot. The proxy may be
31 revoked by the member prior to the receipt of the ballot by the inspector of
32 elections as described in Section 7613 of the Corporations Code.

33 **Comment.** Section 5130 continues former Section 1363.03(d) without change, except as
34 indicated below.

35 The following nonsubstantive changes were made:

- 36 • "Section" was replaced with "article" throughout.
37 • A reference to the "association's" governing documents was not continued.

38 See also Sections 4080 ("association"), 4150 ("governing documents"), 4160 ("member").

39 § 5135. Campaign-related information

40 5135. (a) Association funds shall not be used for campaign purposes in
41 connection with any association board election. Funds of the association shall not
42 be used for campaign purposes in connection with any other association election

1 except to the extent necessary to comply with duties of the association imposed by
2 law.

3 (b) For the purposes of this section, “campaign purposes” includes, but is not
4 limited to, the following:

5 (1) Expressly advocating the election or defeat of any candidate that is on the
6 association election ballot.

7 (2) Including the photograph or prominently featuring the name of any candidate
8 on a communication from the association or its board, excepting the ballot, ballot
9 materials, or a communication that is legally required, within 30 days of an
10 election. This is not a campaign purpose if the communication is one for which
11 subdivision (a) of Section 5105 requires that equal access be provided to another
12 candidate or advocate.

13 **Comment.** Section 5135 continues former Section 1363.04 without change, except as indicated
14 below.

15 The following substantive change was made:

- 16 • An exception was added to the definition of “campaign purposes” for the inclusion of a
17 candidate’s name or photograph in a communication that is legally required. For
18 example, preparation of meeting minutes would not be barred merely because the
19 minutes include the name of a candidate in a pending election. See Section 4950 (board
20 meeting minutes).

21 The following nonsubstantive change was made:

- 22 • A cross-reference in former Section 1363.04(b)(2) was updated to reflect the new
23 location of the referenced provision.

24 See also Sections 4080 (“association”), 4085 (“board”).

25 § 5145. Judicial enforcement

26 5145. (a) A member of an association may bring a civil action for declaratory or
27 equitable relief for a violation of this article by the association, including, but not
28 limited to, injunctive relief, restitution, or a combination thereof, within one year
29 of the date the cause of action accrues. Upon a finding that the election procedures
30 of this article, or the adoption of and adherence to rules provided by Article 5
31 (commencing with Section 4340) of Chapter 3, were not followed, a court may
32 void any results of the election.

33 (b) A member who prevails in a civil action to enforce the member’s rights
34 pursuant to this article shall be entitled to reasonable attorney’s fees and court
35 costs, and the court may impose a civil penalty of up to five hundred dollars
36 (\$500) for each violation, except that each identical violation shall be subject to
37 only one penalty if the violation affects each member of the association equally. A
38 prevailing association shall not recover any costs, unless the court finds the action
39 to be frivolous, unreasonable, or without foundation.

40 (c) A cause of action under Sections 5100 to 5130, inclusive, with respect to
41 access to association resources by a candidate or member advocating a point of
42 view, the receipt of a ballot by a member, or the counting, tabulation, or reporting
43 of, or access to, ballots for inspection and review after tabulation may be brought

1 in small claims court if the amount of the demand does not exceed the jurisdiction
2 of that court.

3 **Comment.** Subdivision (a) of Section 5145 continues former Section 1363.09(a) without
4 change, except as indicated below.

5 The following nonsubstantive changes were made:

- 6 • A cross-reference was updated to reflect the new location of the referenced provision.
- 7 • The words “an association of which he or she is a member” were replaced with “the
8 association.”

9 Subdivision (b) continues former Section 1363.09(b) without change, except as indicated
10 below.

11 The following nonsubstantive change was made:

- 12 • The words “his or her” were replaced with “the member’s.”

13 Subdivision (c) continues former Section 1363.09(c) without change, except as indicated
14 below.

15 The following nonsubstantive change was made:

- 16 • A cross-reference was updated to reflect the new location of the referenced provision.

17 See also Sections 4080 (“association”), 4160 (“member”).

18 Article 5. Record Inspection

19 § 5200. Definitions

20 5200. For the purposes of this article, the following definitions shall apply:

21 (a) “Association records” means all of the following:

22 (1) Any financial document required to be provided to a member in Article 7
23 (commencing with Section 5300) or in Sections 5565 and 5810.

24 (2) Any financial document or statement required to be provided in Article 2
25 (commencing with Section 4525) of Chapter 4.

26 (3) Interim financial statements, periodic or as compiled, containing any of the
27 following:

28 (A) Balance sheet.

29 (B) Income and expense statement.

30 (C) Budget comparison.

31 (D) General ledger. A “general ledger” is a report that shows all transactions that
32 occurred in an association account over a specified period of time.

33 The records described in this paragraph shall be prepared in accordance with an
34 accrual or modified accrual basis of accounting.

35 (4) Executed contracts not otherwise privileged under law.

36 (5) Written board approval of vendor or contractor proposals or invoices.

37 (6) State and federal tax returns.

38 (7) Reserve account balances and records of payments made from reserve
39 accounts.

40 (8) Agendas and minutes of meetings of the members, the board and any
41 committees appointed by the board pursuant to Section 7212 of the Corporations
42 Code; excluding, however, agendas, minutes, and other information from

1 executive sessions of the board as described in Article 2 (commencing with
2 Section 4900).

3 (9) Membership lists, including name, property address, and mailing address,
4 but not including information for members who have opted out pursuant to Section
5 5220.

6 (10) Check registers.

7 (11) The governing documents.

8 (12) An accounting prepared pursuant to subdivision (b) of Section 5520.

9 (13) An “enhanced association record” as defined in subdivision (b).

10 (b) “Enhanced association records” means invoices, receipts and canceled
11 checks for payments made by the association, purchase orders approved by the
12 association, credit card statements for credit cards issued in the name of the
13 association, statements for services rendered, and reimbursement requests
14 submitted to the association.

15 **Comment.** Subdivision (a) of Section 5200 continues former Section 1365.2(a)(1) without
16 change, except as indicated below.

17 The following substantive change was made:

- 18 • Paragraphs (a)(11)-(13) are new.

19 The following nonsubstantive changes were made:

- 20 • “Section” was replaced with “article” in the introductory clause.
- 21 • Cross-references were updated to reflect the new location of the referenced provisions.
- 22 • Substantive limitations on access to the membership list are not appropriate for
23 inclusion in a definition and were relocated, without substantive change, to Sections
24 5220 and 5225. A cross-reference Section 5220 was added.
- 25 • The words “board of directors” were replaced throughout with “board.” See Section
26 4085 (“board”).

27 Subdivision (b) continues former Section 1365.2(a)(2) without change, except as indicated
28 below.

29 The following nonsubstantive change was made:

- 30 • A substantive rule providing that a person submitting a reimbursement request is
31 “solely responsible for removing all personal identification information from the
32 request” is not appropriate for inclusion in a definition and was relocated, without
33 substantive change, to Section 5205(g). For more information about the significance of
34 the term “enhanced association records,” see Section 5205(g) generally.

35 See also Sections 4080 (“association”), 4150 (“governing documents”), 4160 (“member”),
36 4177 (“reserve accounts”).

37 § 5205. Inspection and copying of association records

38 5205. (a) The association shall make available association records for the time
39 periods and within the timeframes provided in Section 5210 for inspection and
40 copying by a member, or the member’s designated representative. The association
41 may bill the requesting member for the direct and actual cost of copying requested
42 documents. The association shall inform the member of the amount of the copying
43 costs before copying the requested documents.

1 (b) A member of the association may designate another person to inspect and
2 copy the specified association records on the member's behalf. The member shall
3 make this designation in writing.

4 (c) The association shall make the specified association records available for
5 inspection and copying in the association's business office within the common
6 interest development.

7 (d) If the association does not have a business office within the development, the
8 association shall make the specified association records available for inspection
9 and copying at a place agreed to by the requesting member and the association.

10 (e) If the association and the requesting member cannot agree upon a place for
11 inspection and copying pursuant to subdivision (d) or if the requesting member
12 submits a written request directly to the association for copies of specifically
13 identified records, the association may satisfy the requirement to make the
14 association records available for inspection and copying by delivering copies of
15 the specifically identified records to the member by individual delivery pursuant to
16 Section 4040 within the timeframes set forth in subdivision (b) of Section 5210.

17 (f) The association may bill the requesting member for the direct and actual cost
18 of copying and mailing requested documents. The association shall inform the
19 member of the amount of the copying and mailing costs, and the member shall
20 agree to pay those costs, before copying and sending the requested documents.

21 (g) In addition to the direct and actual costs of copying and mailing, the
22 association may bill the requesting member an amount not in excess of ten dollars
23 (\$10) per hour, and not to exceed two hundred dollars (\$200) total per written
24 request, for the time actually and reasonably involved in redacting the enhanced
25 association record. If the enhanced association record includes a reimbursement
26 request, the person submitting the reimbursement request shall be solely
27 responsible for removing all personal identification information from the request.
28 The association shall inform the member of the estimated costs, and the member
29 shall agree to pay those costs, before retrieving the requested documents.

30 (h) Requesting parties shall have the option of receiving specifically identified
31 records by electronic transmission or machine-readable storage media as long as
32 those records can be transmitted in a redacted format that does not allow the
33 records to be altered. The cost of duplication shall be limited to the direct cost of
34 producing the copy of a record in that electronic format. The association may
35 deliver specifically identified records by electronic transmission or machine-
36 readable storage media as long as those records can be transmitted in a redacted
37 format that prevents the records from being altered.

38 **Comment.** Subdivisions (a) through (g) of Section 5205 continue former Section 1365.2(b)-(c)
39 without change, except as indicated below.

40 The following substantive change was made:

- 41 • Language was added to provide for "individual delivery" of records, rather than
42 mailing. See Section 4040.

43 The following nonsubstantive changes were made:

- Cross-references were updated to reflect the new location of the referenced provisions.
- The words “member of the association” were replaced with “member.” See Section 4160 (“member”).
- A superfluous reference to “enhanced association records” was not continued in subdivision (a). See Section 5200(a)(12) (“association records” includes “enhanced association records”).
- Subdivision (d) was rephrased to avoid ending the sentence with a preposition.
- The second sentence of subdivision (g) was added to continue the substance of the last clause of former Section 1365.2(a)(2).

Subdivision (h) continues former Section 1365.2(h) without change.

See also Sections 4080 (“association”), 4100 (“common interest development”).

§ 5210. Time periods

5210. (a) Association records are subject to member inspection for the following time periods:

(1) For the current fiscal year and for each of the previous two fiscal years.

(2) Notwithstanding paragraph (1), minutes of member and board meetings are subject to inspection permanently. If a committee has decision making authority, minutes of the meetings of that committee shall be made available commencing January 1, 2007, and shall thereafter be permanently subject to inspection.

(b) When a member properly requests access to association records, access to the requested records shall be granted within the following time periods:

(1) Association records prepared during the current fiscal year, within 10 business days following the association’s receipt of the request.

(2) Association records prepared during the previous two fiscal years, within 30 calendar days following the association’s receipt of the request.

(3) Any record or statement available pursuant to Article 2 (commencing with Section 4525) of Chapter 4, Article 7 (commencing with Section 5300), Section 5565, or Section 5810, within the timeframe specified therein.

(4) Minutes of member and board meetings, within the timeframe specified in subdivision (a) of Section 4950.

(5) Minutes of meetings of committees with decisionmaking authority for meetings commencing on or after January 1, 2007, within 15 calendar days following approval.

(6) Membership list, within the timeframe specified in Section 8330 of the Corporations Code.

(c) There shall be no liability pursuant to this article for an association that fails to retain records for the periods specified in subdivision (a) that were created prior to January 1, 2006.

Comment. Subdivisions (a) and (b) of Section 5210 continue the substance of former Section 1365.2(i)-(j).

Subdivision (c) continues former Section 1365.2(k) without change, except as indicated below. The following nonsubstantive changes were made:

- The word “section” was replaced with “article.”
- A cross-reference was updated to reflect the new location of the referenced provision.

1 See also Sections 4080 (“association”), 4090 (“board meeting”), 4160 (“member”).

2 **§ 5215. Withholding and redaction**

3 5215. (a) Except as provided in subdivision (b), the association may withhold or
4 redact information from the association records if any of the following are true:

5 (1) The release of the information is reasonably likely to lead to identity theft.
6 For the purposes of this section, “identity theft” means the unauthorized use of
7 another person’s personal identifying information to obtain credit, goods, services,
8 money, or property. Examples of information that may be withheld or redacted
9 pursuant to this paragraph include bank account numbers of members or vendors,
10 social security or tax identification numbers, and check, stock, and credit card
11 numbers.

12 (2) The release of the information is reasonably likely to lead to fraud in
13 connection with the association.

14 (3) The information is privileged under law. Examples include documents
15 subject to attorney-client privilege or relating to litigation in which the association
16 is or may become involved, and confidential settlement agreements.

17 (4) The release of the information is reasonably likely to compromise the
18 privacy of an individual member of the association.

19 (5) The information contains any of the following:

20 (A) Records of a-la-carte goods or services provided to individual members of
21 the association for which the association received monetary consideration other
22 than assessments.

23 (B) Records of disciplinary actions, collection activities, or payment plans of
24 members other than the member requesting the records.

25 (C) Any person’s personal identification information, including, without
26 limitation, social security number, tax identification number, driver’s license
27 number, credit card account numbers, bank account number, and bank routing
28 number.

29 (D) Agendas, minutes, and other information from executive sessions of the
30 board as described in Article 2 (commencing with Section 4900), except for
31 executed contracts not otherwise privileged. Privileged contracts shall not include
32 contracts for maintenance, management, or legal services.

33 (E) Personnel records other than the payroll records required to be provided
34 under subdivision (b).

35 (F) Interior architectural plans, including security features, for individual homes.

36 (b) Except as provided by the attorney-client privilege, the association may not
37 withhold or redact information concerning the compensation paid to employees,
38 vendors, or contractors. Compensation information for individual employees shall
39 be set forth by job classification or title, not by the employee’s name, social
40 security number, or other personal information.

41 (c) No association, officer, director, employee, agent, or volunteer of an
42 association shall be liable for damages to a member of the association or any third

1 party as the result of identity theft or other breach of privacy because of the failure
2 to withhold or redact that member's information under this section unless the
3 failure to withhold or redact the information was intentional, willful, or negligent.

4 (d) If requested by the requesting member, an association that denies or redacts
5 records shall provide a written explanation specifying the legal basis for
6 withholding or redacting the requested records.

7 **Comment.** Section 5215 continues former Section 1365.2(d) without change, except as
8 indicated below.

9 The following nonsubstantive changes were made:

- 10 • A cross-reference was updated to reflect the new location of the referenced provision.
- 11 • The words "board of directors" were replaced with "board." See Section 4085
12 ("board").

13 See also Sections 4080 ("association"), 4140 ("director"), 4160 ("member").

14 **§ 5220. Membership list opt out**

15 5220. A member of the association may opt out of the sharing of that member's
16 name, property address, and mailing address by notifying the association in
17 writing that the member prefers to be contacted via the alternative process
18 described in subdivision (c) of Section 8330 of the Corporations Code. This optout
19 shall remain in effect until changed by the member.

20 **Comment.** Section 5220 continues former Section 1365.2(a)(1)(I)(iii) without change, except
21 as indicated below.

22 The following nonsubstantive changes were made:

- 23 • The words "his or her" were replaced with "member" throughout.
- 24 • "Opt-out" was replaced with "optout" to reflect modern usage.

25 See also Sections 4080 ("association"), 4160 ("member").

26 **§ 5225. Membership list request**

27 5225. A member requesting the membership list shall state the purpose for
28 which the list is requested, which purpose shall be reasonably related to the
29 requester's interest as a member. If the association reasonably believes that the
30 information in the list will be used for another purpose, it may deny the member
31 access to the list. If the request is denied, in any subsequent action brought by the
32 member under Section 5235, the association shall have the burden to prove that
33 the member would have allowed use of the information for purposes unrelated to
34 the member's interest as a member.

35 **Comment.** Section 5225 continues former Section 1365.2(a)(1)(I)(ii) without change, except
36 as indicated below.

37 The following nonsubstantive changes were made:

- 38 • A comma was added in the first sentence.
- 39 • "The member requesting the list" was replaced with "a member requesting the
40 membership list," to improve clarity.
- 41 • A cross-reference was updated to reflect the new location of the referenced provision.
- 42 • "His or her" was replaced with "the member's."

43 See also Sections 4080 ("association"), 4160 ("member").

1 **§ 5230. Restriction on use of records**

2 5230. (a) The association records, and any information from them, may not be
3 sold, used for a commercial purpose, or used for any other purpose not reasonably
4 related to a member's interest as a member. An association may bring an action
5 against any person who violates this article for injunctive relief and for actual
6 damages to the association caused by the violation.

7 (b) This article may not be construed to limit the right of an association to
8 damages for misuse of information obtained from the association records pursuant
9 to this article or to limit the right of an association to injunctive relief to stop the
10 misuse of this information.

11 (c) An association shall be entitled to recover reasonable costs and expenses,
12 including reasonable attorney's fees, in a successful action to enforce its rights
13 under this article.

14 **Comment.** Section 5230 continues former Section 1365.2(e) without change, except as
15 indicated below.

16 The following nonsubstantive changes were made:

- 17 • "The member requesting the list" was replaced with "A member requesting the
18 membership list," to improve clarity.
- 19 • A cross-reference was updated to reflect the new location of the referenced provision.
- 20 • "His or her" was replaced with "the member's."
- 21 • "This section" was replaced with "this article" throughout.

22 See also Sections 4080 ("association"), 4160 ("member"), 4170 ("person").

23 **§ 5235. Enforcement**

24 5235. (a) A member may bring an action to enforce that member's right to
25 inspect and copy the association records. If a court finds that the association
26 unreasonably withheld access to the association records, the court shall award the
27 member reasonable costs and expenses, including reasonable attorney's fees, and
28 may assess a civil penalty of up to five hundred dollars (\$500) for the denial of
29 each separate written request.

30 (b) A cause of action under this section may be brought in small claims court if
31 the amount of the demand does not exceed the jurisdiction of that court.

32 (c) A prevailing association may recover any costs if the court finds the action to
33 be frivolous, unreasonable, or without foundation.

34 **Comment.** Section 5235 continues former Section 1365.2(f) without change, except as
35 indicated below.

36 The following nonsubstantive changes were made:

- 37 • The provision was divided into subdivisions for ease of reference.
- 38 • The words "member of an association" were replaced with "member." See Section
39 4160 ("member").

40 See also Section 4080 ("association").

1 **§ 5240. Application of article**

2 5240. (a) As applied to an association and its members, the provisions of this
3 article are intended to supersede the provisions of Sections 8330 and 8333 of the
4 Corporations Code to the extent those sections are inconsistent.

5 (b) Except as provided in subdivision (a), members of the association shall have
6 access to association records, including accounting books and records and
7 membership lists, in accordance with Article 3 (commencing with Section 8330)
8 of Chapter 13 of Part 3 of Division 2 of Title 1 of the Corporations Code.

9 (c) The provisions of this article apply to any community service organization or
10 similar entity that is related to the association, and to any nonprofit entity that
11 provides services to a common interest development under a declaration of trust.
12 This article shall operate to give a member of the organization or entity a right to
13 inspect and copy the records of that organization or entity equivalent to that
14 granted to association members by this article.

15 (d) The provisions of this article shall not apply to any common interest
16 development in which separate interests are being offered for sale by a subdivider
17 under the authority of a public report issued by the Department of Real Estate so
18 long as the subdivider or all subdividers offering those separate interests for sale,
19 or any employees of those subdividers or any other person who receives direct or
20 indirect compensation from any of those subdividers, comprise a majority of the
21 directors. Notwithstanding the foregoing, this article shall apply to that common
22 interest development no later than 10 years after the close of escrow for the first
23 sale of a separate interest to a member of the general public pursuant to the public
24 report issued for the first phase of the development.

25 **Comment.** Subdivision (a) of Section 5240 continues former Section 1365.2(l) without
26 change, except as indicated below.

27 The following nonsubstantive change was made:

- 28 • The word “section” was replaced with “article.”

29 Subdivision (b) continues the first sentence of former Section 1363(f) without change, except
30 as indicated below.

31 The following nonsubstantive change was made:

- 32 • The introductory clause was added to clarify the relationship between this provision
33 and subdivision (a). The second sentence of former Section 1363(f) was not continued.
34 That provision is unnecessary because its substance is subsumed within Section
35 5200(a)(11), which guarantees access to all governing documents, and not just the
36 operating rules.

37 Subdivision (c) continues former Section 1365.2(g) without change, except as indicated below.

38 The following nonsubstantive changes were made:

- 39 • “Section” was replaced with “article” throughout.
40 • A superfluous reference to the definition of “community service organization” was not
41 continued. See Section 4110 (“community service organization or similar entity”).

42 Subdivision (d) continues former Section 1365.2(m) without change, except as indicated
43 below.

44 The following nonsubstantive changes were made:

- 45 • “Section” was replaced with “article” throughout.

- 1 • The words “board of directors of the association” were replaced with “board.” See
- 2 Section 4085 (“board”).
- 3 • The words “board member” were replaced with “director.” See Section 4140
- 4 (“director”).

5 See also Sections 4080 (“association”), 4100 (“common interest development”), 4110
6 (“community service organization or similar entity”), 4160 (“member”), 4185 (“separate
7 interest”).

8 Article 6. Record Keeping

9 § 5260. Mailing-related requests

10 5260. To be effective, any of the following requests shall be delivered in writing
11 to the association, pursuant to Section 4035:

12 (a) A request to change the member’s information in the association
13 membership list.

14 (b) A request to add or remove a second address for delivery of individual
15 notices to the member, pursuant to subdivision (b) of Section 4040.

16 (c) A request for individual delivery of general notices to the member, pursuant
17 to subdivision (b) of Section 4045, or a request to cancel a prior request for
18 individual delivery of general notices.

19 (d) A request to opt out of the membership list pursuant to Section 5220, or a
20 request to cancel a prior request to opt out of the membership list.

21 (e) A request to receive a full copy of a specified annual budget report or annual
22 policy statement pursuant to Section 5320.

23 (f) A request to receive all reports in full, pursuant to subdivision (b) of Section
24 5320, or a request to cancel a prior request to receive all reports in full.

25 **Comment.** Section 5260 is new. It requires that the specified requests be written and delivered
26 to the association pursuant to Section 4035.

27 See also Sections 4080 (“association”), 4160 (“member”).

28 Article 7. Annual Reports

29 § 5300. Annual budget report

30 5300. (a) Notwithstanding a contrary provision in the governing documents, an
31 association shall distribute an annual budget report, 30 to 90 days before the end
32 of its fiscal year.

33 (b) Unless the governing documents impose more stringent standards, the annual
34 budget report shall include all of the following information:

35 (1) A pro forma operating budget, showing the estimated revenue and expenses
36 on an accrual basis.

37 (2) A summary of the association’s reserves, prepared pursuant to Section 5565.

38 (3) A summary of the reserve funding plan adopted by the board, as specified in
39 paragraph (5) of subdivision (b) of Section 5550. The summary shall include

1 notice to members that the full reserve study plan is available upon request, and
2 the association shall provide the full reserve plan to any member upon request.

3 (4) A statement as to whether the board has determined to defer or not undertake
4 repairs or replacement of any major component with a remaining life of 30 years
5 or less, including a justification for the deferral or decision not to undertake the
6 repairs or replacement.

7 (5) A statement as to whether the board, consistent with the reserve funding plan
8 adopted pursuant to Section 5560 has determined or anticipates that the levy of
9 one or more special assessments will be required to repair, replace, or restore any
10 major component or to provide adequate reserves therefor. If so, the statement
11 shall also set out the estimated amount, commencement date, and duration of the
12 assessment.

13 (6) A statement as to the mechanism or mechanisms by which the board will
14 fund reserves to repair or replace major components, including assessments,
15 borrowing, use of other assets, deferral of selected replacements or repairs, or
16 alternative mechanisms.

17 (7) A general statement addressing the procedures used for the calculation and
18 establishment of those reserves to defray the future repair, replacement, or
19 additions to those major components that the association is obligated to maintain.
20 The statement shall include, but need not be limited to, reserve calculations made
21 using the formula described in paragraph (4) of subdivision (b) of Section 5570,
22 and may not assume a rate of return on cash reserves in excess of 2 percent above
23 the discount rate published by the Federal Reserve Bank of San Francisco at the
24 time the calculation was made.

25 (8) A statement as to whether the association has any outstanding loans with an
26 original term of more than one year, including the payee, interest rate, amount
27 outstanding, annual payment, and when the loan is scheduled to be retired.

28 (9) A summary of the association's property, general liability, earthquake, flood,
29 and fidelity insurance policies. For each policy, the summary shall include the
30 name of the insurer, the type of insurance, the policy limit, and the amount of the
31 deductible, if any. To the extent that any of the required information is specified in
32 the insurance policy declaration page, the association may meet its obligation to
33 disclose that information by making copies of that page and distributing it with the
34 annual budget report. The summary distributed pursuant to this paragraph shall
35 contain, in at least 10-point boldface type, the following statement:

36 "This summary of the association's policies of insurance provides only certain
37 information, as required by Section 5300 of the Civil Code, and should not be
38 considered a substitute for the complete policy terms and conditions contained in
39 the actual policies of insurance. Any association member may, upon request and
40 provision of reasonable notice, review the association's insurance policies and,
41 upon request and payment of reasonable duplication charges, obtain copies of
42 those policies. Although the association maintains the policies of insurance

1 specified in this summary, the association's policies of insurance may not cover
2 your property, including personal property or real property improvements to or
3 around your dwelling, or personal injuries or other losses that occur within or
4 around your dwelling. Even if a loss is covered, you may nevertheless be
5 responsible for paying all or a portion of any deductible that applies. Association
6 members should consult with their individual insurance broker or agent for
7 appropriate additional coverage."

8 (c) The annual budget report shall be made available to the members pursuant to
9 Section 5320.

10 (d) The summary of the association's reserves disclosed pursuant to paragraph
11 (2) of subdivision (b) shall not be admissible in evidence to show improper
12 financial management of an association, provided that other relevant and
13 competent evidence of the financial condition of the association is not made
14 inadmissible by this provision.

15 (e) The Assessment and Reserve Funding Disclosure Summary form, prepared
16 pursuant to Section 5570, shall accompany each annual budget report or summary
17 of the annual budget report that is delivered pursuant to this article.

18 **Comment.** Subdivision (a) of Section 5300 continues the substance of the last paragraph of
19 former Section 1365(a).

20 Subdivision (b)(1) continues the substance of former Section 1365(a)(1).

21 Subdivision (b)(2) continues the substance of the introduction of former Section 1365(a)(2).
22 The substance of the remainder of former Section 1365(a)(2) is continued in Section 5565.

23 Subdivision (b)(3) continues former Section 1365(b) without change, except as indicated
24 below.

25 The following nonsubstantive changes were made:

- 26 • The commencement date of that provision (January 1, 2009) was not continued.
- 27 • An erroneous cross-reference to former Section 1365.5(e)(4) was revised to refer to
28 Section 5560(b)(5), which continues former Section 1365.5(e)(5).
- 29 • The words "board of directors of the association" were replaced with "board." See
30 Section 4085 ("board").

31 Subdivision (b)(4) continues former Section 1365(a)(3)(A) without change, except as indicated
32 below.

33 The following nonsubstantive changes were made:

- 34 • The introductory clause was added.
- 35 • The words "board of directors of the association" were replaced with "board." See
36 Section 4085 ("board").

37 Subdivision (b)(5) continues former Section 1365(a)(3)(B) without change, except as indicated
38 below.

39 The following nonsubstantive changes were made:

- 40 • The introductory clause was added.
- 41 • The words "board of directors of the association" were replaced with "board." See
42 Section 4085 ("board").

43 Subdivision (b)(6) continues former Section 1365(a)(3)(C) without change, except as indicated
44 below.

45 The following nonsubstantive changes were made:

- 46 • The introductory clause was added.

- The words “board of directors of the association” were replaced with “board.” See Section 4085 (“board”).

Subdivision (b)(7) continues the first paragraph of former Section 1365(a)(4) without change, except as indicated below.

The following nonsubstantive changes were made:

- A cross-reference was updated to reflect the new location of the referenced provision.
- The word “report” was replaced with “statement,” for terminological consistency.

Subdivision (b)(8) continues former Section 1365(a)(3)(D) without change, except as indicated below.

The following nonsubstantive change was made:

- The introductory clause was added.

Subdivision (b)(9) continues former Section 1365(f)(1), (3)-(4) without change, except as indicated below.

The following nonsubstantive changes were made:

- The redundant word “any” was replaced with “the.”
- An extraneous comma was deleted from the statutory notice text.
- The substance of the second clause of the first sentence of former Section 1365(f)(1) is subsumed within subdivision (a) of Section 5300.

Subdivision (c) is consistent with former Section 1365(d).

Subdivision (d) continues the second paragraph of former Section 1365(a)(4) without change, except as indicated below.

The following nonsubstantive change was made:

- A cross-reference was updated to reflect the new location of the referenced provision.

Subdivision (e) continues the substance of former Section 1365.2.5(b)(3).

See also Sections 4080 (“association”), 4135 (“declaration”), 4150 (“governing documents”), 4160 (“member”).

§ 5305. Review of financial statement

5305. Unless the governing documents impose more stringent standards, a review of the financial statement of the association shall be prepared in accordance with generally accepted accounting principles by a licensee of the California Board of Accountancy for any fiscal year in which the gross income to the association exceeds seventy-five thousand dollars (\$75,000). A copy of the review of the financial statement shall be distributed within 120 days after the close of each fiscal year, by individual delivery pursuant to Section 4040.

Comment. Section 5305 continues former Section 1365(c) without change, except as indicated below.

The following substantive change was made:

- Language was added to specify the method of delivery.
- The introductory clause is consistent with the introduction of former Section 1365.

See also Sections 4080 (“association”), 4150 (“governing documents”).

§ 5310. Annual policy statement

5310. (a) Within 30 to 90 days before the end of its fiscal year, the board shall distribute an annual policy statement that provides the members with information

1 about association policies. The annual policy statement shall include all of the
2 following information:

3 (1) The name and address of the person designated to receive official
4 communications to the association, pursuant to Section 4035.

5 (2) A statement explaining that a member may submit a request to have notices
6 sent to up to two different specified addresses, pursuant to subdivision (b) of
7 Section 4040.

8 (3) The location, if any, designated for posting of a general notice, pursuant to
9 paragraph (3) of subdivision (a) of Section 4045.

10 (4) Notice of a member's option to receive general notices by individual
11 delivery, pursuant to subdivision (b) of Section 4045.

12 (5) Notice of a member's right to receive copies of meeting minutes, pursuant to
13 subdivision (b) of Section 4950.

14 (6) The statement of assessment collection policies required by Section 5730.

15 (7) A statement describing the association's policies and practices in enforcing
16 lien rights or other legal remedies for default in the payment of assessments.

17 (8) A statement describing the association's discipline policy, if any, including
18 any schedule of penalties for violations of the governing documents pursuant to
19 Section 5850.

20 (9) A summary of dispute resolution procedures, pursuant to Sections 5920 and
21 5965.

22 (10) A summary of any requirements for association approval of a physical
23 change to property, pursuant to Section 4765.

24 (11) The mailing address for overnight payment of assessments, pursuant to
25 Section 5655.

26 (12) Any other information that is required by law or the governing documents
27 or that the board determines to be appropriate for inclusion.

28 (b) The annual policy statement shall be made available to the members
29 pursuant to Section 5320.

30 **Comment.** Section 5310 is new. It aggregates the annual non-budgetary disclosures that are
31 required under various provisions of this act.

32 Subdivision (a)(7) continues the substance of former Section 1365(e).

33 See also Sections 4080 ("association"), 4085 ("board"), 4150 ("governing documents"), 4160
34 ("member").

35 **§ 5320. Notice of availability**

36 5320. (a) When a report is prepared pursuant to Section 5300 or 5310, the
37 association shall deliver one of the following documents to all members, by
38 individual delivery pursuant to Section 4040:

39 (1) The full report.

40 (2) A summary of the report. The summary shall include a general description of
41 the content of the report. Instructions on how to request a complete copy of the
42 report at no cost to the member shall be printed in at least 10-point boldface type
43 on the first page of the summary.

(b) Notwithstanding subdivision (a), if a member has requested to receive all reports in full, the association shall deliver the full report to that member, rather than a summary of the report.

Comment. Subdivision (a) of Section 5320 generalizes former Section 1365(d), so that the former optional “summary” approach to distributing the annual pro forma budget is extended to the annual policy statement. Nothing in this section prevents an association from combining multiple reports or summaries of reports in a single mailing.

Subdivision (b) is new.

See also Sections 4080 (“association”), 4160 (“member”).

Article 8. Conflict of Interest

§ 5350. Interested director

5350. (a) Notwithstanding any other law, and regardless of whether an association is incorporated or unincorporated, the provisions of Sections 7233 and 7234 of the Corporations Code shall apply to any contract or other transaction authorized, approved, or ratified by the board or a committee of the board.

(b) A director or member of a committee shall not vote on any of the following matters:

(1) Discipline of the director or committee member.

(2) An assessment against the director or committee member for damage to the common area or facilities.

(3) A request, by the director or committee member, for a payment plan for overdue assessments.

(4) A decision whether to foreclose on a lien on the separate interest of the director or committee member.

(5) Review of a proposed physical change to the separate interest of the director or committee member.

(6) A grant of exclusive use common area to the director or committee member.

(c) Nothing in this section limits any other provision of law or the governing documents that governs a decision in which a director may have an interest.

Comment. Subdivision (a) of Section 5350 continues the substance of former Section 1365.6, except as indicated below.

The following nonsubstantive change was made:

- The reference to Corporations Code Section 310, which governs the General Corporation Law, was replaced with a reference to Corporations Code Sections 7233 and 7234, which state equivalent rules for nonprofit mutual benefit corporations.

Subdivisions (b) and (c) are new. The “discipline” referenced in subdivision (b)(1) may include discipline for a violation of the governing documents, this act, or a fiduciary duty.

See also Sections 4080 (“association”), 4085 (“board”), 4095 (“common area”), 4140 (“director”), 4145 (“exclusive use common area”), 4150 (“governing documents”), 4185 (“separate interest”).

Article 9. Managing Agent

§ 5375. Prospective managing agent disclosure

5375. A prospective managing agent of a common interest development shall provide a written statement to the board as soon as practicable, but in no event more than 90 days, before entering into a management agreement which shall contain all of the following information concerning the managing agent:

(a) The names and business addresses of the owners or general partners of the managing agent. If the managing agent is a corporation, the written statement shall include the names and business addresses of the directors and officers and shareholders holding greater than 10 percent of the shares of the corporation.

(b) Whether or not any relevant licenses such as architectural design, construction, engineering, real estate, or accounting have been issued by this state and are currently held by the persons specified in subdivision (a). If a license is currently held by any of those persons, the statement shall contain the following information:

(1) What license is held.

(2) The dates the license is valid.

(3) The name of the licensee appearing on that license.

(c) Whether or not any relevant professional certifications or designations such as architectural design, construction, engineering, real property management, or accounting are currently held by any of the persons specified in subdivision (a), including, but not limited to, a professional common interest development manager. If any certification or designation is held, the statement shall include the following information:

(1) What the certification or designation is and what entity issued it.

(2) The dates the certification or designation is valid.

(3) The names in which the certification or designation is held.

Comment. Section 5375 continues former Section 1363.1(a) without change, except as indicated below.

The following nonsubstantive changes were made:

- The words “of a common interest development” were not continued.
- The words “board of directors of the association” were replaced with “board.” See Section 4085 (“board”).

See also Sections 4100 (“common interest development”), 4140 (“director”), 4155 (“managing agent”).

§ 5380. Trust fund account

5380. (a) A managing agent of a common interest development who accepts or receives funds belonging to the association shall deposit those funds that are not placed into an escrow account with a bank, savings association, or credit union or into an account under the control of the association, into a trust fund account maintained by the managing agent in a bank, savings association, or credit union in this state. All funds deposited by the managing agent in the trust fund account

1 shall be kept in this state in a financial institution, as defined in Section 31041 of
2 the Financial Code, which is insured by the federal government, and shall be
3 maintained there until disbursed in accordance with written instructions from the
4 association entitled to the funds.

5 (b) At the written request of the board, the funds the managing agent accepts or
6 receives on behalf of the association shall be deposited into an interest-bearing
7 account in a bank, savings association, or credit union in this state, provided all of
8 the following requirements are met:

9 (1) The account is in the name of the managing agent as trustee for the
10 association or in the name of the association.

11 (2) All of the funds in the account are covered by insurance provided by an
12 agency of the federal government.

13 (3) The funds in the account are kept separate, distinct, and apart from the funds
14 belonging to the managing agent or to any other person for whom the managing
15 agent holds funds in trust except that the funds of various associations may be
16 commingled as permitted pursuant to subdivision (d).

17 (4) The managing agent discloses to the board the nature of the account, how
18 interest will be calculated and paid, whether service charges will be paid to the
19 depository and by whom, and any notice requirements or penalties for withdrawal
20 of funds from the account.

21 (5) No interest earned on funds in the account shall inure directly or indirectly to
22 the benefit of the managing agent or the managing agent's employees.

23 (c) The managing agent shall maintain a separate record of the receipt and
24 disposition of all funds described in this section, including any interest earned on
25 the funds.

26 (d) The managing agent shall not commingle the funds of the association with
27 the managing agent's own money or with the money of others that the managing
28 agent receives or accepts, unless all of the following requirements are met:

29 (1) The managing agent commingled the funds of various associations on or
30 before February 26, 1990, and has obtained a written agreement with the board of
31 each association that the managing agent will maintain a fidelity and surety bond
32 in an amount that provides adequate protection to the associations as agreed upon
33 by the managing agent and the board of each association.

34 (2) The managing agent discloses in the written agreement whether the
35 managing agent is deriving benefits from the commingled account or the bank,
36 credit union, or savings institution where the moneys will be on deposit.

37 (3) The written agreement provided pursuant to this subdivision includes, but is
38 not limited to, the name and address of the bonding companies, the amount of the
39 bonds, and the expiration dates of the bonds.

40 (4) If there are any changes in the bond coverage or the companies providing the
41 coverage, the managing agent discloses that fact to the board of each affected
42 association as soon as practical, but in no event more than 10 days after the
43 change.

1 (5) The bonds assure the protection of the association and provide the
2 association at least 10 days' notice prior to cancellation.

3 (6) Completed payments on the behalf of the association are deposited within 24
4 hours or the next business day and do not remain commingled for more than 10
5 calendar days.

6 (e) The prevailing party in an action to enforce this section shall be entitled to
7 recover reasonable legal fees and court costs.

8 (f) As used in this section, "completed payment" means funds received that
9 clearly identify the account to which the funds are to be credited.

10 **Comment.** Subdivision (a) of Section 5380 continues former Section 1363.2(a) without
11 change, except for the following nonsubstantive change: "All such" is replaced with "those" to
12 conform to standard legislative drafting practice.

13 Subdivisions (b) and (c) continue former Section 1363.2(b)-(c) without change, except as
14 indicated below.

15 The following nonsubstantive changes were made:

- 16 • The words "his or her" were replaced with "the managing agent's."
- 17 • The words "or entity" were not continued. See Section 4170 ("person").
- 18 • The words "board of directors" were replaced with "board." See Section 4085
19 ("board").

20 Subdivision (d) continues former Section 1363.2(d) without change, except as indicated below.
21 The following nonsubstantive changes were made:

- 22 • The words "he or she" and "his or her" were replaced with "the managing agent" or
23 "the managing agent's" throughout.
- 24 • The words "board of directors" were replaced with "board." See Section 4085
25 ("board").

26 Subdivision (e) continues former Section 1363.2(e) without change.

27 Subdivision (f) continues former Section 1363.2(g) without change, except as indicated below.

28 The following nonsubstantive changes were made:

- 29 • The word "which" was replaced with "that."

30 See also Sections 4080 ("association"), 4100 ("common interest development"), 4155
31 ("managing agent").

32 § 5385. Managing agent

33 5385. For the purposes of this article, "managing agent" does not include a full-
34 time employee of the association.

35 **Comment.** Section 5385 continues the substance of former Section 1363.1(b)(1) and the first
36 clause of the second sentence of former Section 1363.2(f).

37 See also Sections 4080 ("association"), 4155 ("managing agent").

38 Article 10. Government Assistance

39 § 5400. Director training course

40 5400. To the extent existing funds are available, the Department of Consumer
41 Affairs and the Department of Real Estate shall develop an online education
42 course for the board regarding the role, duties, laws, and responsibilities of
43 directors and prospective directors, and the nonjudicial foreclosure process.

1 **Comment.** Section 5400 continues the substance of former Section 1363.001, except as
2 indicated below.

3 The following nonsubstantive changes were made:

- 4 • The words “board of directors” were replaced with “board.” See Section 4085
5 (“board”).
- 6 • The words “board member” were replaced with “director.” See Section 4140
7 (“director”).
- 8 • The word “on-line” was replaced with “online.”

9 **§ 5405. State registry**

10 5405. (a) To assist with the identification of common interest developments,
11 each association, whether incorporated or unincorporated, shall submit to the
12 Secretary of State, on a form and for a fee not to exceed thirty dollars (\$30) that
13 the Secretary of State shall prescribe, the following information concerning the
14 association and the development that it manages:

15 (1) A statement that the association is formed to manage a common interest
16 development under the Davis-Stirling Common Interest Development Act.

17 (2) The name of the association.

18 (3) The street address of the association’s onsite office, or, if none, of the
19 responsible officer or managing agent of the association.

20 (4) The name, address, and either the daytime telephone number or e-mail
21 address of the president of the association, other than the address, telephone
22 number, or e-mail address of the association’s onsite office or managing agent.

23 (5) The name, street address, and daytime telephone number of the association’s
24 managing agent, if any.

25 (6) The county, and if in an incorporated area, the city in which the development
26 is physically located. If the boundaries of the development are physically located
27 in more than one county, each of the counties in which it is located.

28 (7) If the development is in an unincorporated area, the city closest in proximity
29 to the development.

30 (8) The nine-digit ZIP Code, front street, and nearest cross street of the physical
31 location of the development.

32 (9) The type of common interest development managed by the association.

33 (10) The number of separate interests in the development.

34 (b) The association shall submit the information required by this section as
35 follows:

36 (1) By incorporated associations, within 90 days after the filing of its original
37 articles of incorporation, and thereafter at the time the association files its biennial
38 statement of principal business activity with the Secretary of State pursuant to
39 Section 8210 of the Corporations Code.

40 (2) By unincorporated associations, in July of 2003, and in that same month
41 biennially thereafter. Upon changing its status to that of a corporation, the
42 association shall comply with the filing deadlines in paragraph (1).

1 (c) The association shall notify the Secretary of State of any change in the street
2 address of the association's onsite office or of the responsible officer or managing
3 agent of the association in the form and for a fee prescribed by the Secretary of
4 State, within 60 days of the change.

5 (d) The penalty for an incorporated association's noncompliance with the initial
6 or biennial filing requirements of this section shall be suspension of the
7 association's rights, privileges, and powers as a corporation and monetary
8 penalties, to the same extent and in the same manner as suspension and monetary
9 penalties imposed pursuant to Section 8810 of the Corporations Code.

10 (e) The Secretary of State shall make the information submitted pursuant to
11 paragraph (4) of subdivision (a) available only for governmental purposes and
12 only to Members of the Legislature and the Business, Transportation and Housing
13 Agency, upon written request. All other information submitted pursuant to this
14 section shall be subject to public inspection pursuant to the California Public
15 Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title
16 1 of the Government Code). The information submitted pursuant to this section
17 shall be made available for governmental or public inspection.

18 **Comment.** Section 5405 continues former Section 1363.6 without change, except as indicated
19 below.

20 The following nonsubstantive changes were made:

- 21 • Cross-references were updated to reflect the new location of the referenced provisions.
- 22 • The words "of the association" were not continued in subdivision (a)(4).
- 23 • Superfluous references to definition sections were not continued.
- 24 • Obsolete transitional dates were not continued in subdivisions (d) and (e).

25 See also Sections 4080 ("association"), 4100 ("common interest development"), 4155
26 ("managing agent").

27 CHAPTER 7. FINANCES

28 Article 1. Accounting

29 § 5500. Board review

30 5500. Unless the governing documents impose more stringent standards, the
31 board shall do all of the following:

32 (a) Review a current reconciliation of the association's operating accounts on at
33 least a quarterly basis.

34 (b) Review a current reconciliation of the association's reserve accounts on at
35 least a quarterly basis.

36 (c) Review, on at least a quarterly basis, the current year's actual reserve
37 revenues and expenses compared to the current year's budget.

38 (d) Review the latest account statements prepared by the financial institutions
39 where the association has its operating and reserve accounts.

40 (e) Review an income and expense statement for the association's operating and
41 reserve accounts on at least a quarterly basis.

1 **Comment.** Section 5500 continues former Section 1365.5(a) without change, except as
2 indicated below.

3 The following nonsubstantive change was made:

- 4 • The words “board of directors of the association” were replaced with “board.” See
5 Section 4085 (“board”).

6 See also Sections 4080 (“association”), 4150 (“governing documents”), 4177 (“reserve
7 accounts”).

8 Article 2. Use of Reserve Funds

9 **§ 5510. Use of reserve funds**

10 5510. (a) The signatures of at least two persons, who shall be directors, or one
11 officer who is not a director and one who is a director, shall be required for the
12 withdrawal of moneys from the association’s reserve accounts.

13 (b) The board shall not expend funds designated as reserve funds for any
14 purpose other than the repair, restoration, replacement, or maintenance of, or
15 litigation involving the repair, restoration, replacement, or maintenance of, major
16 components that the association is obligated to repair, restore, replace, or maintain
17 and for which the reserve fund was established.

18 **Comment.** Subdivision (a) of Section 5510 continues former Section 1365.5(b) without
19 change, except as indicated below.

20 The following nonsubstantive changes were made:

- 21 • The words “board of directors” were replaced with “board.” See Section 4085
22 (“board”).
- 23 • The words “one who is” were added to the sentence to make its meaning clearer.
- 24 • The words “board member” were replaced with “director.” See Section 4140
25 (“director”).

26 Subdivision (b) continues former Section 1365.5(c)(1) without change, except as indicated
27 below.

28 The following nonsubstantive change was made:

- 29 • The words “board of directors” were replaced with “board.” See Section 4085
30 (“board”).

31 See also Sections 4080 (“association”), 4177 (“reserve accounts”).

32 **§ 5515. Temporary transfer of reserve funds**

33 5515. (a) Notwithstanding Section 5510, the board may authorize the temporary
34 transfer of moneys from a reserve fund to the association’s general operating fund
35 to meet short-term cashflow requirements or other expenses, if the board has
36 provided notice of the intent to consider the transfer in a board meeting notice
37 provided pursuant to Section 4920.

38 (b) The notice shall include the reasons the transfer is needed, some of the
39 options for repayment, and whether a special assessment may be considered.

40 (c) If the board authorizes the transfer, the board shall issue a written finding,
41 recorded in the board’s minutes, explaining the reasons that the transfer is needed,
42 and describing when and how the moneys will be repaid to the reserve fund.

1 (d) The transferred funds shall be restored to the reserve fund within one year of
2 the date of the initial transfer, except that the board may, after giving the same
3 notice required for considering a transfer, and, upon making a finding supported
4 by documentation that a temporary delay would be in the best interests of the
5 common interest development, temporarily delay the restoration.

6 (e) The board shall exercise prudent fiscal management in maintaining the
7 integrity of the reserve account, and shall, if necessary, levy a special assessment
8 to recover the full amount of the expended funds within the time limits required by
9 this section. This special assessment is subject to the limitation imposed by
10 Section 5605. The board may, at its discretion, extend the date the payment on the
11 special assessment is due. Any extension shall not prevent the board from
12 pursuing any legal remedy to enforce the collection of an unpaid special
13 assessment.

14 **Comment.** Section 5515 continues former Section 1365.5(c)(2) without change, except as
15 indicated below.

16 The following nonsubstantive changes were made:

- 17 • The provision was divided into subdivisions for ease of reference.
- 18 • Cross-references were updated to reflect the new location of the referenced provisions.
- 19 • The introductory word “However” was replaced with “Notwithstanding Section 5510.”
- 20 • The last clause of subdivision (a) was rephrased for clarity.

21 See also Sections 4080 (“association”), 4085 (“board”), 4090 (“board meeting”), 4100
22 (“common interest development”), 4177 (“reserve accounts”).

23 § 5520. Use of reserve funds for litigation

24 5520. (a) When the decision is made to use reserve funds or to temporarily
25 transfer moneys from the reserve fund to pay for litigation pursuant to subdivision
26 (b) of Section 5510, the association shall provide general notice pursuant to
27 Section 4045 of that decision, and of the availability of an accounting of those
28 expenses.

29 (b) Unless the governing documents impose more stringent standards, the
30 association shall make an accounting of expenses related to the litigation on at
31 least a quarterly basis. The accounting shall be made available for inspection by
32 members at the association’s office.

33 **Comment.** Section 5520 continues former Section 1365.5(d) without change, except as
34 indicated below.

35 The following substantive change was made:

- 36 • A reference to notice pursuant to Corporations Code Section 5016 was replaced with a
37 requirement of general notice pursuant to Section 4045.

38 The following nonsubstantive changes were made:

- 39 • The provision was divided into subdivisions for ease of reference.
- 40 • A cross-reference to Section 5510(b) was added for clarity.
- 41 • The words “members of the association” were replaced with “members.” See Section
42 4160 (“member”).

43 See also Sections 4080 (“association”), 4085 (“board”), 4150 (“governing documents”).

Article 3. Reserve Planning

§ 5550. Visual inspection of major components and reserve study

5550. (a) At least once every three years, the board shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components that the association is obligated to repair, replace, restore, or maintain as part of a study of the reserve account requirements of the common interest development, if the current replacement value of the major components is equal to or greater than one-half of the gross budget of the association, excluding the association's reserve account for that period. The board shall review this study, or cause it to be reviewed, annually and shall consider and implement necessary adjustments to the board's analysis of the reserve account requirements as a result of that review.

(b) The study required by this section shall at a minimum include:

(1) Identification of the major components that the association is obligated to repair, replace, restore, or maintain that, as of the date of the study, have a remaining useful life of less than 30 years.

(2) Identification of the probable remaining useful life of the components identified in paragraph (1) as of the date of the study.

(3) An estimate of the cost of repair, replacement, restoration, or maintenance of the components identified in paragraph (1).

(4) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the components identified in paragraph (1) during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.

(5) A reserve funding plan that indicates how the association plans to fund the contribution identified in paragraph (4) to meet the association's obligation for the repair and replacement of all major components with an expected remaining life of 30 years or less, not including those components that the board has determined will not be replaced or repaired.

Comment. Section 5550 continues former Section 1365.5(e)(1)-(4) and the first sentence of (e)(5) without change, except as indicated below.

The following nonsubstantive change was made:

- The words "board of directors" were replaced with "board." See Section 4085 ("board").

See also Sections 4080 ("association"), 4100 ("common interest development"), 4177 ("reserve accounts"), 4177 ("reserve account requirements").

§ 5560. Reserve funding plan

5560. (a) The reserve funding plan required by Section 5550 shall include a schedule of the date and amount of any change in regular or special assessments that would be needed to sufficiently fund the reserve funding plan.

(b) The plan shall be adopted by the board at an open meeting before the membership of the association as described in Article 2 (commencing with Section 4900) of Chapter 6.

(c) If the board determines that an assessment increase is necessary to fund the reserve funding plan, any increase shall be approved in a separate action of the board that is consistent with the procedure described in Section 5605.

Comment. Section 5560 continues the second, third, and fourth sentences of former Section 1365.5(e)(5) without change, except as indicated below.

The following nonsubstantive changes were made:

- The introductory clause was restated, without substantive change.
- Cross-references were updated to reflect the new location of the referenced provisions.
- The words “board of directors” were replaced with “board.” See Section 4085 (“board”).

See also Section 4080 (“association”).

§ 5565. Summary of association reserves

5565. The summary of the association’s reserves required by paragraph (2) of subdivision (b) of Section 5300 shall be based on the most recent review or study conducted pursuant to Section 5550, shall be based only on assets held in cash or cash equivalents, shall be printed in boldface type and shall include all of the following:

(a) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component.

(b) As of the end of the fiscal year for which the study is prepared:

(1) The current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components.

(2) The current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain major components.

(3) If applicable, the amount of funds received from either a compensatory damage award or settlement to an association from any person for injuries to property, real or personal, arising out of any construction or design defects, and the expenditure or disposition of funds, including the amounts expended for the direct and indirect costs of repair of construction or design defects. These amounts shall be reported at the end of the fiscal year for which the study is prepared as separate line items under cash reserves pursuant to paragraph (2). Instead of complying with the requirements set forth in this paragraph, an association that is obligated to issue a review of its financial statement pursuant to Section 5305 may include in the review a statement containing all of the information required by this paragraph.

(c) The percentage that the amount determined for purposes of paragraph (2) of subdivision (b) equals the amount determined for purposes of paragraph (1) of subdivision (b).

(d) The current deficiency in reserve funding expressed on a per unit basis. The figure shall be calculated by subtracting the amount determined for purposes of

paragraph (2) of subdivision (b) from the amount determined for purposes of paragraph (1) of subdivision (b) and then dividing the result by the number of separate interests within the association, except that if assessments vary by the size or type of ownership interest, then the association shall calculate the current deficiency in a manner that reflects the variation.

Comment. Section 5565 continues former Section 1365(a)(2) without change, except as indicated below.

The following nonsubstantive changes were made:

- The introductory clause was revised to reflect the organization of this provision as a separate section and to make minor grammatical improvements.
- Subdivision (b)(3) corrects an erroneous cross-reference (to the financial statement required under Section 5305).
- In subdivision (b)(3), the words “or entity” are not continued. See Section 4170 (“person”).
- In subdivision (b)(3), the word “their” was replaced with “its” for grammatical reasons.
- Cross-references were updated to reflect the new location of the referenced provisions.

See also Sections 4080 (“association”), 4185 (“separate interest”).

§ 5570. Assessment and reserve funding disclosure summary

5570. (a) The disclosures required by this article with regard to an association or a property shall be summarized on the following form:

ASSESSMENT AND RESERVE FUNDING DISCLOSURE SUMMARY FOR THE FISCAL
YEAR ENDING _____

(1) The regular assessment per ownership interest is \$_____ per _____. Note: If assessments vary by the size or type of ownership interest, the assessment applicable to this ownership interest may be found on page _____ of the attached summary.

(2) Additional regular or special assessments that have already been scheduled to be imposed or charged, regardless of the purpose, if they have been approved by the board and/or members:

Date assessment will be due:	Amount per ownership interest per month or year (If assessments are variable, see note immediately below):	Purpose of the assessment:
	Total:	

Note: If assessments vary by the size or type of ownership interest, the assessment applicable to this ownership interest may be found on page ____ of the attached report.

(3) Based upon the most recent reserve study and other information available to the board, will currently projected reserve account balances be sufficient at the end of each year to meet the association's obligation for repair and/or replacement of major components during the next 30 years?

Yes ____ No ____

(4) If the answer to (3) is no, what additional assessments or other contributions to reserves would be necessary to ensure that sufficient reserve funds will be available each year during the next 30 years that have not yet been approved by the board or the members?

Approximate date assessments will be due:	Amount per ownership interest per month or year:
	Total:

(5) All major components are included in the reserve study and are included in its calculations.

(6) Based on the method of calculation in paragraph (4) of subdivision (b) of Section 5570, the estimated amount required in the reserve fund at the end of the current fiscal year is \$____, based in whole or in part on the last reserve study or update prepared by ____ as of ____ (month), ____ (year). The projected reserve fund cash balance at the end of the current fiscal year is \$____, resulting in reserves being ____ percent funded at this date.

If an alternate, but generally accepted, method of calculation is also used, the required reserve amount is \$____. (See attached explanation)

(7) Based on the method of calculation in paragraph (4) of subdivision (b) of Section 5570 of the Civil Code, the estimated amount required in the reserve fund at the end of each of the next five budget years is \$____, and the projected reserve fund cash balance in each of those years, taking into account only assessments already approved and other known revenues, is \$____, leaving the reserve at ____ percent funding. If the reserve funding plan approved by the association is implemented, the projected reserve fund cash balance in each of those years will be \$____, leaving the reserve at ____ percent funding.

1 Note: The financial representations set forth in this summary are based on the
2 best estimates of the preparer at that time. The estimates are subject to change. At
3 the time this summary was prepared, the assumed long-term before-tax interest
4 rate earned on reserve funds was ____ percent per year, and the assumed long-
5 term inflation rate to be applied to major component repair and replacement costs
6 was ____ percent per year.

7 (b) For the purposes of preparing a summary pursuant to this section:

8 (1) “Estimated remaining useful life” means the time reasonably calculated to
9 remain before a major component will require replacement.

10 (2) “Major component” has the meaning used in Section 5550. Components with
11 an estimated remaining useful life of more than 30 years may be included in a
12 study as a capital asset or disregarded from the reserve calculation, so long as the
13 decision is revealed in the reserve study report and reported in the Assessment and
14 Reserve Funding Disclosure Summary.

15 (3) The form set out in subdivision (a) shall accompany each annual budget
16 report or summary thereof that is delivered pursuant to Section 5300. The form
17 may be supplemented or modified to clarify the information delivered, so long as
18 the minimum information set out in subdivision (a) is provided.

19 (4) For the purpose of the report and summary, the amount of reserves needed
20 to be accumulated for a component at a given time shall be computed as the
21 current cost of replacement or repair multiplied by the number of years the
22 component has been in service divided by the useful life of the component. This
23 shall not be construed to require the board to fund reserves in accordance with this
24 calculation.

25 **Comment.** Section 5570 continues former Section 1365.2.5 without change, except as
26 indicated below.

27 The following nonsubstantive changes were made:

- 28 • A reference to distribution of the pro forma operating budget was changed to refer to
29 the annual budget report distributed pursuant to Section 5300.
- 30 • The words “board of directors” were replaced with “board.” See Section 4085
31 (“board”).
- 32 • Former Section 1365.2.5(b)(3) was continued in Section 5300(e).

33 See also Sections 4080 (“association”), 4160 (“member”), 4177 (“reserve accounts”).

34 **§ 5580. Community service organization report**

35 5580. (a) Unless the governing documents impose more stringent standards, any
36 community service organization whose funding from the association or its
37 members exceeds 10 percent of the organization’s annual budget shall prepare and
38 distribute to the association a report that meets the requirements of Section 5012
39 of the Corporations Code, and that describes in detail administrative costs and
40 identifies the payees of those costs in a manner consistent with the provisions of
41 Article 5 (commencing with Section 5200) of Chapter 6.

42 (b) If the community service organization does not comply with the standards,
43 the report shall disclose the noncompliance in detail. If a community service

1 organization is responsible for the maintenance of major components for which an
2 association would otherwise be responsible, the community service organization
3 shall supply to the association the information regarding those components that the
4 association would use to complete disclosures and reserve reports required under
5 this article and Section 5300. An association may rely upon information received
6 from a community service organization, and shall provide access to the
7 information pursuant to the provisions of Article 5 (commencing with Section
8 5200) of Chapter 6.

9 **Comment.** Section 5580 continues former Section 1365.3 without change, except as indicated
10 below.

11 The following nonsubstantive changes were made:

- 12 • Cross-references were updated to reflect the new location of the referenced provisions.
- 13 • The section was divided into subdivisions for ease of reference.
- 14 • A superfluous cross-reference to the definition of “community service organization”
15 was not continued.

16 See also Sections 4080 (“association”), 4110 (“community service organization or similar
17 entity”), 4150 (“governing documents”), 4160 (“member”).

18 CHAPTER 8. ASSESSMENTS AND ASSESSMENT COLLECTION

19 Article 1. Establishment and Imposition of Assessments

20 § 5600. Levy of assessment

21 5600. (a) Except as provided in Section 5605, the association shall levy regular
22 and special assessments sufficient to perform its obligations under the governing
23 documents and this act.

24 (b) An association shall not impose or collect an assessment or fee that exceeds
25 the amount necessary to defray the costs for which it is levied.

26 **Comment.** Subdivision (a) of Section 5600 continues the first sentence of former Section
27 1366(a) without change, except as indicated below.

28 The following nonsubstantive changes were made:

- 29 • A cross-reference was updated to reflect the new location of the referenced provision.
- 30 • The word “title” was replaced with “act.”

31 Subdivision (b) continues the substance of former Section 1366.1.

32 See also Sections 4080 (“association”), 4150 (“governing documents”).

33 § 5605. Assessment approval requirements

34 5605. (a) Annual increases in regular assessments for any fiscal year shall not be
35 imposed unless the board has complied with paragraphs (1), (2), (4), (5), (6), (7),
36 and (8) of subdivision (b) of Section 5300 with respect to that fiscal year, or has
37 obtained the approval of a majority of a quorum of members, pursuant to Section
38 4070, at a member meeting or election.

39 (b) Notwithstanding more restrictive limitations placed on the board by the
40 governing documents, the board may not impose a regular assessment that is more
41 than 20 percent greater than the regular assessment for the association’s preceding

1 fiscal year or impose special assessments which in the aggregate exceed 5 percent
2 of the budgeted gross expenses of the association for that fiscal year without the
3 approval of a majority of a quorum of members, pursuant to Section 4070, at a
4 member meeting or election.

5 (c) For the purposes of this section, “quorum” means more than 50 percent of
6 the members.

7 **Comment.** Subdivision (a) of Section 5605 continues the second sentence of former Section
8 1366(a) without change, except as indicated below.

9 The following nonsubstantive changes were made:

- 10 • Language requiring approval of a majority of members casting a vote at a meeting at
11 which a quorum is established was replaced with a reference to the standard provision
12 on approval by a majority of a quorum of members (Section 4070).
- 13 • A reference to an assessment increase “as authorized by subdivision (b)” is superfluous
14 and potentially confusing, and was not continued.
- 15 • Language requiring that a meeting or election be conducted pursuant to the
16 Corporations Code is inconsistent with former Section 1363.03 and was not continued.
- 17 • A cross-reference to former Section 1365(a) was replaced with a cross-reference to
18 Section 5300(b)(1)-(2), (4)-(8).

19 Subdivision (b) continues the first sentence of former Section 1366(b) without change, except
20 as indicated below.

21 The following nonsubstantive changes were made:

- 22 • Language requiring approval of a majority of members casting a vote at a meeting at
23 which a quorum is established was replaced with a reference to the standard provision
24 on approval by a majority of a quorum of members (Section 4070).
- 25 • Language requiring that a meeting or election be conducted pursuant to the
26 Corporations Code is inconsistent with former Section 1363.03 and was not continued.
- 27 • The words “board of directors” were replaced with “board.” See Section 4085
28 (“board”).

29 Subdivision (c) continues the substance of the last sentence of former Section 1366(a) and the
30 second sentence of former Section 1366(b).

31 See also Sections 4080 (“association”), 4150 (“governing documents”), 4160 (“member”).

32 § 5610. Emergency exception to assessment approval requirements

33 5610. Section 5605 does not limit assessment increases necessary for emergency
34 situations. For purposes of this section, an emergency situation is any one of the
35 following:

36 (a) An extraordinary expense required by an order of a court.

37 (b) An extraordinary expense necessary to repair or maintain the common
38 interest development or any part of it for which the association is responsible
39 where a threat to personal safety on the property is discovered.

40 (c) An extraordinary expense necessary to repair or maintain the common
41 interest development or any part of it for which the association is responsible that
42 could not have been reasonably foreseen by the board in preparing and distributing
43 the annual budget report under Section 5300. However, prior to the imposition or
44 collection of an assessment under this subdivision, the board shall pass a
45 resolution containing written findings as to the necessity of the extraordinary
46 expense involved and why the expense was not or could not have been reasonably

1 foreseen in the budgeting process, and the resolution shall be distributed to the
2 members with the notice of assessment.

3 **Comment.** Section 5610 continues the third and fourth sentences and paragraphs (1) to (3),
4 inclusive, of former Section 1366(b), without change, except as indicated below.

5 The following nonsubstantive changes were made:

- 6 • The words “pro forma operating budget” were replaced with “annual budget report.”
- 7 • Cross-references were updated to reflect the new location of the referenced provisions.

8 See also Sections 4080 (“association”), 4085 (“board”), 4100 (“common interest
9 development”), 4160 (“member”).

10 **§ 5615. Notice of assessment increase**

11 5615. The association shall provide individual notice pursuant to Section 4040
12 to the members of any increase in the regular or special assessments of the
13 association, not less than 30 nor more than 60 days prior to the increased
14 assessment becoming due.

15 **Comment.** Proposed Section 5615 continues former Section 1366(d) without change, except as
16 indicated below.

17 The following nonsubstantive changes were made:

- 18 • A requirement of delivery by first class mail was replaced with a requirement of
19 “individual notice.”
- 20 • The word “owner” was replaced with “member.” See Section 4160 (“member”).

21 See also Section 4080 (“association”).

22 **§ 5620. Exemption from execution**

23 5620. (a) Regular assessments imposed or collected to perform the obligations
24 of an association under the governing documents or this act shall be exempt from
25 execution by a judgment creditor of the association only to the extent necessary
26 for the association to perform essential services, such as paying for utilities and
27 insurance. In determining the appropriateness of an exemption, a court shall
28 ensure that only essential services are protected under this subdivision.

29 (b) This exemption shall not apply to any consensual pledges, liens, or
30 encumbrances that have been approved by a majority of a quorum of members,
31 pursuant to Section 4070, at a member meeting or election, or to any state tax lien,
32 or to any lien for labor or materials supplied to the common area.

33 **Comment.** Section 5620 continues former Section 1366(c) without change, except as indicated
34 below.

35 The following nonsubstantive changes were made:

- 36 • The provision was divided into subdivisions for ease of reference.
- 37 • A reference to approval of a majority of members casting a vote at a meeting at which a
38 quorum is established was replaced with a reference to the standard provision on
39 approval by a majority of a quorum of members (Section 4070).
- 40 • Quorum-related language from former Section 1366(b)-(c) was not continued.
- 41 • The word “title” was replaced with “act.”

42 See also Sections 4080 (“association”), 4095 (“common area”), 4150 (“governing
43 documents”), 4160 (“member”).

1 **§ 5625. Property tax value as basis for assessments**

2 5625. (a) Except as provided in subdivision (b), notwithstanding any provision
3 of this act or the governing documents to the contrary, an association shall not
4 levy assessments on separate interests within the common interest development
5 based on the taxable value of the separate interests unless the association, on or
6 before December 31, 2009, in accordance with its governing documents, levied
7 assessments on those separate interests based on their taxable value, as determined
8 by the tax assessor of the county in which the separate interests are located.

9 (b) An association that is responsible for paying taxes on the separate interests
10 within the common interest development may levy that portion of assessments on
11 separate interests that is related to the payment of taxes based on the taxable value
12 of the separate interest, as determined by the tax assessor.

13 **Comment.** Proposed Section 5625 continues former Section 1366.4 without change, except as
14 indicated below.

15 The following nonsubstantive change was made:

- 16 • The word “title” was replaced with “act.”

17 See also Sections 4080 (“association”), 4100 (“common interest development”), 4150
18 (“governing documents”), 4185 (“separate interest”).

19 Article 2. Assessment Payment and Delinquency

20 **§ 5650. Assessment debt and delinquency**

21 5650. (a) A regular or special assessment and any late charges, reasonable fees
22 and costs of collection, reasonable attorney’s fees, if any, and interest, if any, as
23 determined in accordance with subdivision (b), shall be a debt of the owner of the
24 separate interest at the time the assessment or other sums are levied.

25 (b) Regular and special assessments levied pursuant to the governing documents
26 are delinquent 15 days after they become due, unless the declaration provides a
27 longer time period, in which case the longer time period shall apply. If an
28 assessment is delinquent the association may recover all of the following:

29 (1) Reasonable costs incurred in collecting the delinquent assessment, including
30 reasonable attorney’s fees.

31 (2) A late charge not exceeding 10 percent of the delinquent assessment or ten
32 dollars (\$10), whichever is greater, unless the declaration specifies a late charge in
33 a smaller amount, in which case any late charge imposed shall not exceed the
34 amount specified in the declaration.

35 (3) Interest on all sums imposed in accordance with this section, including the
36 delinquent assessments, reasonable fees and costs of collection, and reasonable
37 attorney’s fees, at an annual interest rate not to exceed 12 percent, commencing 30
38 days after the assessment becomes due, unless the declaration specifies the
39 recovery of interest at a rate of a lesser amount, in which case the lesser rate of
40 interest shall apply.

(c) Associations are hereby exempted from interest-rate limitations imposed by Article XV of the California Constitution, subject to the limitations of this section.

Comment. Subdivision (a) of Section 5650 continues the first sentence of former Section 1367.1(a) without change, except as indicated below.

The following nonsubstantive change was made:

- A cross-reference was updated to reflect the new location of the referenced provision.

Subdivision (b) continues former Section 1366(e) without change.

Subdivision (c) continues former Section 1366(f) without change.

See also Sections 4080 (“association”), 4135 (“declaration”), 4150 (“governing documents”), 4185 (“separate interest”).

§ 5655. Payments

5655. (a) Any payments made by the owner of a separate interest toward assessments shall first be applied to the assessments owed, and only after the assessments owed are paid in full shall the payments be applied to the fees and costs of collection, attorney’s fees, late charges, or interest.

(b) When an owner makes a payment, the owner may request a receipt and the association shall provide it. The receipt shall indicate the date of payment and the person who received it.

(c) The association shall provide a mailing address for overnight payment of assessments. The address shall be provided in the annual policy statement.

Comment. Section 5655 continues the substance of former Section 1367.1(b), except as indicated below.

The following nonsubstantive changes were made:

- A superfluous comma was deleted in the first sentence.
- A superfluous reference to assessment debt “set forth, as required in subdivision (a)” was deleted to make the meaning of the provision clearer.
- The provision was divided into subdivisions for ease of reference.
- The second sentence of subdivision (c) was added to refer to the requirement of Section 5310(a)(11).

See also Sections 4080 (“association”), 4185 (“separate interest”).

§ 5658. Payment under protest

5658. (a) If a dispute exists between the owner of a separate interest and the association regarding any disputed charge or sum levied by the association, including, but not limited to, an assessment, fine, penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary measure, and the amount in dispute does not exceed the jurisdictional limits of the small claims court stated in Sections 116.220 and 116.221 of the Code of Civil Procedure, the owner of the separate interest may, in addition to pursuing dispute resolution pursuant to Article 3 (commencing with Section 5925) of Chapter 10, pay under protest the disputed amount and all other amounts levied, including any fees and reasonable costs of collection, reasonable attorney’s fees, late charges, and interest, if any, pursuant to subdivision (b) of Section 5650, and commence an action in small claims court

1 pursuant to Chapter 5.5 (commencing with Section 116.110) of Title 1 of the Code
2 of Civil Procedure.

3 (b) Nothing in this section shall impede an association's ability to collect
4 delinquent assessments as provided in this article or Article 3 (commencing with
5 Section 5700).

6 **Comment.** Section 5658 continues former Section 1367.6 without change, except as indicated
7 below.

8 The following nonsubstantive changes were made:

- 9 • Cross-references were updated to reflect the new location of the referenced provisions.
- 10 • A reference to the "small claims court" was added for clarity.

11 See also Sections 4080 ("association"), 4185 ("separate interest").

12 **§ 5660. Pre-lien notice**

13 5660. At least 30 days prior to recording a lien upon the separate interest of the
14 owner of record to collect a debt that is past due under Section 5650, the
15 association shall notify the owner of record in writing by certified mail of the
16 following:

17 (a) A general description of the collection and lien enforcement procedures of
18 the association and the method of calculation of the amount, a statement that the
19 owner of the separate interest has the right to inspect the association records
20 pursuant to Section 5205, and the following statement in 14-point boldface type, if
21 printed, or in capital letters, if typed:

22 "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN
23 FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS,
24 IT MAY BE SOLD WITHOUT COURT ACTION."

25 (b) An itemized statement of the charges owed by the owner, including items on
26 the statement which indicate the amount of any delinquent assessments, the fees
27 and reasonable costs of collection, reasonable attorney's fees, any late charges,
28 and interest, if any.

29 (c) A statement that the owner shall not be liable to pay the charges, interest, and
30 costs of collection, if it is determined the assessment was paid on time to the
31 association.

32 (d) The right to request a meeting with the board as provided by Section 5665.

33 (e) The right to dispute the assessment debt by submitting a written request for
34 dispute resolution to the association pursuant to the association's "meet and
35 confer" program required in Article 2 (commencing with Section 5900) of Chapter
36 10.

37 (f) The right to request alternative dispute resolution with a neutral third party
38 pursuant to Article 3 (commencing with Section 5925) of Chapter 10 before the
39 association may initiate foreclosure against the owner's separate interest, except
40 that binding arbitration shall not be available if the association intends to initiate a
41 judicial foreclosure.

1 **Comment.** Section 5660 continues the second sentence of former Section 1367.1(a), and
2 paragraphs (1) to (6) of that provision, inclusive, without change, except as indicated below.

3 The following nonsubstantive changes were made:

- 4 • The reference to inspection of records under Corporations Code Section 8333 was
5 replaced with a reference to inspection of records under Section 5205.
- 6 • Cross-references were updated to reflect the new location of the referenced provisions.

7 See also Sections 4080 (“association”), 4085 (“board”), 4185 (“separate interest”).

8 **§ 5665. Payment plan**

9 5665. (a) An owner, other than an owner of any interest that is described in
10 Section 11212 of the Business and Professions Code that is not otherwise exempt
11 from this section pursuant to subdivision (a) of Section 11211.7 of the Business
12 and Professions Code, may submit a written request to meet with the board to
13 discuss a payment plan for the debt noticed pursuant to Section 5660. The
14 association shall provide the owners the standards for payment plans, if any exist.

15 (b) The board shall meet with the owner in executive session within 45 days of
16 the postmark of the request, if the request is mailed within 15 days of the date of
17 the postmark of the notice, unless there is no regularly scheduled board meeting
18 within that period, in which case the board may designate a committee of one or
19 more directors to meet with the owner.

20 (c) Payment plans may incorporate any assessments that accrue during the
21 payment plan period. Additional late fees shall not accrue during the payment plan
22 period if the owner is in compliance with the terms of the payment plan.

23 (d) Payment plans shall not impede an association’s ability to record a lien on
24 the owner’s separate interest to secure payment of delinquent assessments.

25 (e) In the event of a default on any payment plan, the association may resume its
26 efforts to collect the delinquent assessments from the time prior to entering into
27 the payment plan.

28 **Comment.** Section 5665 continues former Section 1367.1(c)(3) without change, except as
29 indicated below.

30 The following nonsubstantive changes were made:

- 31 • Cross-references were updated to reflect the new location of the referenced provisions.
- 32 • The provision was divided into subdivisions for ease of reference.
- 33 • The words “board member” were replaced with “director.” See Section 4140
34 (“director”).
- 35 • In subdivision (a), the cross-reference was revised to refer to the Business and
36 Professions Code.

37 See also Sections 4080 (“association”), 4085 (“board”), 4090 (“board meeting”), 4185
38 (“separate interest”).

39 **§ 5670. Pre-lien dispute resolution**

40 5670. Prior to recording a lien for delinquent assessments, an association shall
41 offer the owner and, if so requested by the owner, participate in dispute resolution
42 pursuant to the association’s “meet and confer” program required in Article 2
43 (commencing with Section 5900) of Chapter 10.

1 **Comment.** Section 5670 continues former Section 1367.1(c)(1)(A) without change, except as
2 indicated below.

3 The following nonsubstantive change was made:

- 4 • A cross-reference was updated to reflect the new location of the referenced provision.

5 See also Section 4080 (“association”).

6 **§ 5673. Decision to lien**

7 5673. For liens recorded on or after January 1, 2006, the decision to record a lien
8 for delinquent assessments shall be made only by the board and may not be
9 delegated to an agent of the association. The board shall approve the decision by a
10 majority vote of the directors in an open meeting. The board shall record the vote
11 in the minutes of that meeting.

12 **Comment.** Section 5673 continues former Section 1367.1(c)(2) without change, except as
13 indicated below.

14 The following nonsubstantive changes were made:

- 15 • The words “board of directors of the association” were replaced with “board.” See
16 Section 4085 (“board”).
- 17 • The word “board member” was replaced with “director.” See Section 4140 (“director”).

18 See also Section 4080 (“association”).

19 **§ 5675. Notice of delinquent assessment**

20 5675. (a) The amount of the assessment, plus any costs of collection, late
21 charges, and interest assessed in accordance with subdivision (b) of Section 5650,
22 shall be a lien on the owner’s separate interest in the common interest
23 development from and after the time the association causes to be recorded with the
24 county recorder of the county in which the separate interest is located, a notice of
25 delinquent assessment, which shall state the amount of the assessment and other
26 sums imposed in accordance with subdivision (b) of Section 5650, a legal
27 description of the owner’s separate interest in the common interest development
28 against which the assessment and other sums are levied, and the name of the
29 record owner of the separate interest in the common interest development against
30 which the lien is imposed.

31 (b) The itemized statement of the charges owed by the owner described in
32 subdivision (b) of Section 5660 shall be recorded together with the notice of
33 delinquent assessment.

34 (c) In order for the lien to be enforced by nonjudicial foreclosure as provided in
35 Sections 5700 to 5710, inclusive, the notice of delinquent assessment shall state
36 the name and address of the trustee authorized by the association to enforce the
37 lien by sale.

38 (d) The notice of delinquent assessment shall be signed by the person designated
39 in the declaration or by the association for that purpose, or if no one is designated,
40 by the president of the association.

41 (e) A copy of the recorded notice of delinquent assessment shall be mailed by
42 certified mail to every person whose name is shown as an owner of the separate

1 interest in the association's records, and the notice shall be mailed no later than 10
2 calendar days after recordation.

3 **Comment.** Section 5675 continues the first five sentences of former Section 1367.1(d) without
4 change, except as indicated below.

5 The following nonsubstantive changes were made:

- 6 • Cross-references were updated to reflect the new location of the referenced provisions.
- 7 • In subdivision (c), the word "through" was replaced with "to" for stylistic reasons.

8 See also Sections 4080 ("association"), 4100 ("common interest development"), 4135
9 ("declaration"), 4170 ("person"), 4185 ("separate interest").

10 **§ 5680. Lien priority**

11 5680. A lien created pursuant to Section 5675 shall be prior to all other liens
12 recorded subsequent to the notice of delinquent assessment, except that the
13 declaration may provide for the subordination thereof to any other liens and
14 encumbrances.

15 **Comment.** Section 5680 continues former Section 1367.1(f) without change, except as
16 indicated below.

17 The following nonsubstantive changes were made:

- 18 • The words "notice of assessment" were replaced with the more specific "notice of
19 delinquent assessment."
- 20 • A cross-reference was updated to reflect the new location of the referenced provision.

21 See also Section 4135 ("declaration").

22 **§ 5685. Lien release**

23 5685. (a) Within 21 days of the payment of the sums specified in the notice of
24 delinquent assessment, the association shall record or cause to be recorded in the
25 office of the county recorder in which the notice of delinquent assessment is
26 recorded a lien release or notice of rescission and provide the owner of the
27 separate interest a copy of the lien release or notice that the delinquent assessment
28 has been satisfied.

29 (b) If it is determined that a lien previously recorded against the separate interest
30 was recorded in error, the party who recorded the lien shall, within 21 calendar
31 days, record or cause to be recorded in the office of the county recorder in which
32 the notice of delinquent assessment is recorded a lien release or notice of
33 rescission and provide the owner of the separate interest with a declaration that the
34 lien filing or recording was in error and a copy of the lien release or notice of
35 rescission.

36 (c) If it is determined that an association has recorded a lien for a delinquent
37 assessment in error, the association shall promptly reverse all late charges, fees,
38 interest, attorney's fees, costs of collection, costs imposed for the notice prescribed
39 in Section 5660, and costs of recordation and release of the lien authorized under
40 subdivision (b) of Section 5720, and pay all costs related to any related dispute
41 resolution or alternative dispute resolution.

1 **Comment.** Subdivision (a) of Section 5685 continues the sixth sentence of former Section
2 1367.1(d) without change.

3 Subdivision (b) continues former Section 1367.1(i) without change.

4 Subdivision (c) continues former Section 1367.5 without change, except as indicated below.

5 The following substantive change was made:

- 6 • The requirement that the error be discovered as a result of alternative dispute resolution
7 was not continued.

8 The following nonsubstantive change was made:

- 9 • Cross-references were updated to reflect the new location of the referenced provisions.

10 See also Sections 4080 (“association”), 4185 (“separate interest”).

11 § 5690. Procedural noncompliance

12 5690. An association that fails to comply with the procedures set forth in this
13 article shall, prior to recording a lien, recommence the required notice process.
14 Any costs associated with recommencing the notice process shall be borne by the
15 association and not by the owner of a separate interest.

16 **Comment.** Section 5690 continues former Section 1367.1(l) without change, except as
17 indicated below.

18 The following nonsubstantive change was made:

- 19 • The word “section” was replaced with “article.”

20 See also Section 4080 (“association”).

21 Article 3. Assessment Collection

22 § 5700. Collection generally

23 5700. (a) Except as otherwise provided in this article, after the expiration of 30
24 days following the recording of a lien created pursuant to Section 5675, the lien
25 may be enforced in any manner permitted by law, including sale by the court, sale
26 by the trustee designated in the notice of delinquent assessment, or sale by a
27 trustee substituted pursuant to Section 2934a.

28 (b) Nothing in Article 2 (commencing with Section 5650) or in subdivision (a)
29 of Section 726 of the Code of Civil Procedure prohibits actions against the owner
30 of a separate interest to recover sums for which a lien is created pursuant to Article
31 2 (commencing with Section 5650) or prohibits an association from taking a deed
32 in lieu of foreclosure.

33 **Comment.** Subdivision (a) of Section 5700 continues the substance of the second sentence of
34 former Section 1367.1(g), except as indicated below.

35 The following nonsubstantive changes were made:

- 36 • The introductory clause was broadened to recognize the application of all restrictions
37 on collection that are provided in this article. See, e.g., Sections 5720 (limitation on
38 foreclosure), 5735 (limitation on assignment).
- 39 • Cross-references were updated to reflect the new location of the referenced provisions.

40 Subdivision (b) continues former Section 1367.1(h) without change, except as indicated below.

41 The following nonsubstantive change was made:

- 42 • Cross-references were updated to reflect the new location of the referenced provisions.

1 See also Sections 4080 (“association”), 4185 (“separate interest”).

2 **§ 5705. Decision to foreclose**

3 5705. (a) Notwithstanding any law or any provisions of the governing
4 documents to the contrary, this section shall apply to debts for assessments that
5 arise on and after January 1, 2006.

6 (b) Prior to initiating a foreclosure on an owner’s separate interest, the
7 association shall offer the owner and, if so requested by the owner, participate in
8 dispute resolution pursuant to the association’s “meet and confer” program
9 required in Article 2 (commencing with Section 5900) of Chapter 10 or alternative
10 dispute resolution as set forth in Article 3 (commencing with Section 5925) of
11 Chapter 10. The decision to pursue dispute resolution or a particular type of
12 alternative dispute resolution shall be the choice of the owner, except that binding
13 arbitration shall not be available if the association intends to initiate a judicial
14 foreclosure.

15 (c) The decision to initiate foreclosure of a lien for delinquent assessments that
16 has been validly recorded shall be made only by the board and may not be
17 delegated to an agent of the association. The board shall approve the decision by a
18 majority vote of the directors in an executive session. The board shall record the
19 vote in the minutes of the next meeting of the board open to all members. The
20 board shall maintain the confidentiality of the owner or owners of the separate
21 interest by identifying the matter in the minutes by the parcel number of the
22 property, rather than the name of the owner or owners. A board vote to approve
23 foreclosure of a lien shall take place at least 30 days prior to any public sale.

24 (d) The board shall provide notice by personal service in accordance with the
25 manner of service of summons in Article 3 (commencing with Section 415.10) of
26 Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure to an owner of a
27 separate interest who occupies the separate interest or to the owner’s legal
28 representative, if the board votes to foreclose upon the separate interest. The board
29 shall provide written notice to an owner of a separate interest who does not occupy
30 the separate interest by first-class mail, postage prepaid, at the most current
31 address shown on the books of the association. In the absence of written
32 notification by the owner to the association, the address of the owner’s separate
33 interest may be treated as the owner’s mailing address.

34 **Comment.** Subdivision (a) of Section 5705 continues former Section 1367.4(a), as it related to
35 the substance of this section, without change.

36 Subdivision (b) continues former Section 1367.4(c)(1) without change, except as indicated
37 below.

38 The following nonsubstantive change was made:

- 39 • Cross-references were updated to reflect the new location of the referenced provisions.

40 Subdivision (b) is also consistent with former Section 1367.1(c)(1)(B).

41 Subdivision (c) continues former Section 1367.4(c)(2) without change, except as indicated
42 below.

43 The following nonsubstantive changes were made:

- 1 • The words “board of directors of the association” were replaced with “board.” See
- 2 Section 4085 (“board”).
- 3 • The words “board member” were replaced with “director.” See Section 4140
- 4 (“director”).

5 Subdivision (d) continues former Section 1367.4(c)(3) without change.

6 See also Sections 4080 (“association”), 4150 (“governing documents”), 4160 (“member”),

7 4185 (“separate interest”).

8 **§ 5710. Foreclosure**

9 5710. (a) Any sale by the trustee shall be conducted in accordance with Sections

10 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages

11 and deeds of trust.

12 (b) In addition to the requirements of Section 2924, the association shall serve a

13 notice of default on the person named as the owner of the separate interest in the

14 association’s records or, if that person has designated a legal representative

15 pursuant to this subdivision, on that legal representative. Service shall be in

16 accordance with the manner of service of summons in Article 3 (commencing with

17 Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure.

18 An owner may designate a legal representative in a writing that is mailed to the

19 association in a manner that indicates that the association has received it.

20 (c) The fees of a trustee may not exceed the amounts prescribed in Sections

21 2924c and 2924d, plus the cost of service for either of the following:

22 (1) The notice of default pursuant to subdivision (b).

23 (2) The decision of the board to foreclose upon the separate interest of an owner

24 as described in subdivision (d) of Section 5705.

25 **Comment.** Subdivision (a) of Section 5710 continues the third sentence of former Section

26 1367.1(g) without change.

27 Subdivision (b) continues the substance of former Section 1367.1(j).

28 Subdivision (c) continues the fourth sentence, and paragraphs (1) and (2), of former Section

29 1367.1(g) without change, except as indicated below.

30 The following nonsubstantive change was made:

- 31 • Cross-references were updated to reflect the new location of the referenced provisions.

32 See also Sections 4080 (“association”), 4085 (“board”), 4170 (“person”), 4185 (“separate

33 interest”).

34 **§ 5715. Right of redemption after trustee sale**

35 5715. (a) Notwithstanding any law or any provisions of the governing

36 documents to the contrary, this section shall apply to debts for assessments that

37 arise on and after January 1, 2006.

38 (b) A nonjudicial foreclosure by an association to collect upon a debt for

39 delinquent assessments shall be subject to a right of redemption. The redemption

40 period within which the separate interest may be redeemed from a foreclosure sale

41 under this paragraph ends 90 days after the sale. In addition to the requirements of

42 Section 2924f, a notice of sale in connection with an association’s foreclosure of a

1 separate interest in a common interest development shall include a statement that
2 the property is being sold subject to the right of redemption created in this section.

3 **Comment.** Subdivision (a) of Section 5715 continues former Section 1367.4(a), as it related to
4 the substance of this section, without change.

5 Subdivision (b) continues former Section 1367.4(c)(4) without change, except as indicated
6 below.

7 The following nonsubstantive change was made:

- 8 • “This paragraph” was replaced with “this section.”

9 See also Sections 4080 (“association”), 4100 (“common interest development”), 4150
10 (“governing documents”), 4185 (“separate interest”).

11 **§ 5720. Limitation on foreclosure**

12 5720. (a) Notwithstanding any law or any provisions of the governing
13 documents to the contrary, this section shall apply to debts for assessments that
14 arise on and after January 1, 2006.

15 (b) An association that seeks to collect delinquent regular or special assessments
16 of an amount less than one thousand eight hundred dollars (\$1,800), not including
17 any accelerated assessments, late charges, fees and costs of collection, attorney’s
18 fees, or interest, may not collect that debt through judicial or nonjudicial
19 foreclosure, but may attempt to collect or secure that debt in any of the following
20 ways:

21 (1) By a civil action in small claims court, pursuant to Chapter 5.5 (commencing
22 with Section 116.110) of Title 1 of Part 1 of the Code of Civil Procedure. An
23 association that chooses to proceed by an action in small claims court, and
24 prevails, may enforce the judgment as permitted under Article 8 (commencing
25 with Section 116.810) of Chapter 5.5 of Title 1 of Part 1 of the Code of Civil
26 Procedure. The amount that may be recovered in small claims court to collect
27 upon a debt for delinquent assessments may not exceed the jurisdictional limits of
28 the small claims court and shall be the sum of the following:

29 (A) The amount owed as of the date of filing the complaint in the small claims
30 court proceeding.

31 (B) In the discretion of the court, an additional amount to that described in
32 subparagraph (A) equal to the amount owed for the period from the date the
33 complaint is filed until satisfaction of the judgment, which total amount may
34 include accruing unpaid assessments and any reasonable late charges, fees and
35 costs of collection, attorney’s fees, and interest, up to the jurisdictional limits of
36 the small claims court.

37 (2) By recording a lien on the owner’s separate interest upon which the
38 association may not foreclose until the amount of the delinquent assessments
39 secured by the lien, exclusive of any accelerated assessments, late charges, fees
40 and costs of collection, attorney’s fees, or interest, equals or exceeds one thousand
41 eight hundred dollars (\$1,800) or the assessments secured by the lien are more
42 than 12 months delinquent. An association that chooses to record a lien under
43 these provisions, prior to recording the lien, shall offer the owner and, if so

requested by the owner, participate in dispute resolution as set forth in Article 2 (commencing with Section 5900) of Chapter 10.

(3) Any other manner provided by law, except for judicial or nonjudicial foreclosure.

(c) The limitation on foreclosure of assessment liens for amounts under the stated minimum in this section does not apply to any of the following:

(1) Assessments secured by a lien that are more than 12 months delinquent.

(2) Assessments owed by owners of separate interests in timeshare estates, as defined in subdivision (x) of Section 11212 of the Business and Professions Code.

(3) Assessments owed by the developer.

Comment. Subdivision (a) of Section 5720 continues former Section 1367.4(a), as it related to the substance of this section, without change.

Subdivision (b) continues former Section 1367.4(b) without change, except as indicated below.

The following nonsubstantive changes were made:

- A cross-reference was updated to reflect the new location of the referenced provision.
- Incomplete cross-references in paragraph (1) were corrected.

Subdivision (c) continues former Section 1367.4(d) without change, except as indicated below.

The following nonsubstantive changes were made:

- The first paragraph was added to reflect the rule in former Section 1367.4(c).
- The second paragraph replaces an erroneous cross-reference to Business and Professions Code Section 11112(x) with a cross-reference to Business and Professions Code Section 11212(x).

See also Sections 4080 (“association”), 4150 (“governing documents”), 4185 (“separate interest”).

§ 5725. Limitations on authority to foreclose liens for monetary penalties and damage to the common area

5725. (a) A monetary charge imposed by the association as a means of reimbursing the association for costs incurred by the association in the repair of damage to common area and facilities caused by a member or the member’s guest or tenant may become a lien against the member’s separate interest enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c, provided the authority to impose a lien is set forth in the governing documents. It is the intent of the Legislature not to contravene Section 2792.26 of Title 10 of the California Code of Regulations, as that section appeared on January 1, 1996, for associations of subdivisions that are being sold under authority of a subdivision public report, pursuant to Part 2 (commencing with Section 11000) of Division 4 of the Business and Professions Code.

(b) A monetary penalty imposed by the association as a disciplinary measure for failure of a member to comply with the governing documents, except for the late payments, may not be characterized nor treated in the governing documents as an assessment that may become a lien against the member’s separate interest enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c.

Comment. Subdivision (a) of Section 5725 continues the seventh and eighth sentences of former Section 1367.1(d) without change, except as indicated below.

1 The following nonsubstantive change was made:

- 2 • The words “common areas” were singularized.

3 Subdivision (b) continues former Section 1367.1(e) without change, except as indicated below.

4 The following nonsubstantive changes were made:

- 5 • The introductory clause “except as indicated in subdivision (d)” was not continued.
6 • The words “governing instruments” were replaced with “governing documents.”
7 • The words “subdivision separate interest” were replaced with “separate interest.”

8 See also Sections 4080 (“association”), 4095 (“common area”), 4150 (“governing
9 documents”), 4160 (“member”), 4185 (“separate interest”).

10 **§ 5730. Statement of collection procedure**

11 5730. (a) The annual policy statement, prepared pursuant to Section 5310, shall
12 include the following notice, in at least 12-point type:

13 “NOTICE ASSESSMENTS AND FORECLOSURE

14 This notice outlines some of the rights and responsibilities of owners of property
15 in common interest developments and the associations that manage them. Please
16 refer to the sections of the Civil Code indicated for further information. A portion
17 of the information in this notice applies only to liens recorded on or after January
18 1, 2003. You may wish to consult a lawyer if you dispute an assessment.

19 ASSESSMENTS AND FORECLOSURE

20 Assessments become delinquent 15 days after they are due, unless the governing
21 documents provide for a longer time. The failure to pay association assessments
22 may result in the loss of an owner’s property through foreclosure. Foreclosure may
23 occur either as a result of a court action, known as judicial foreclosure or without
24 court action, often referred to as nonjudicial foreclosure. For liens recorded on and
25 after January 1, 2006, an association may not use judicial or nonjudicial
26 foreclosure to enforce that lien if the amount of the delinquent assessments or
27 dues, exclusive of any accelerated assessments, late charges, fees, attorney’s fees,
28 interest, and costs of collection, is less than one thousand eight hundred dollars
29 (\$1,800). For delinquent assessments or dues in excess of one thousand eight
30 hundred dollars (\$1,800) or more than 12 months delinquent, an association may
31 use judicial or nonjudicial foreclosure subject to the conditions set forth in Article
32 3 (commencing with Section 5700) of Chapter 8 of Part 5 of Division 4 of the
33 Civil Code. When using judicial or nonjudicial foreclosure, the association records
34 a lien on the owner’s property. The owner’s property may be sold to satisfy the
35 lien if the amounts secured by the lien are not paid. (Sections 5700 through 5720
36 of the Civil Code, inclusive)

37 In a judicial or nonjudicial foreclosure, the association may recover assessments,
38 reasonable costs of collection, reasonable attorney’s fees, late charges, and
39 interest. The association may not use nonjudicial foreclosure to collect fines or

1 penalties, except for costs to repair common area damaged by a member or a
2 member's guests, if the governing documents provide for this. (Section 5725 of
3 the Civil Code)

4 The association must comply with the requirements of Article 2 (commencing
5 with Section 5650) of Chapter 8 of Part 5 of Division 4 of the Civil Code when
6 collecting delinquent assessments. If the association fails to follow these
7 requirements, it may not record a lien on the owner's property until it has satisfied
8 those requirements. Any additional costs that result from satisfying the
9 requirements are the responsibility of the association. (Section 5675 of the Civil
10 Code)

11 At least 30 days prior to recording a lien on an owner's separate interest, the
12 association must provide the owner of record with certain documents by certified
13 mail, including a description of its collection and lien enforcement procedures and
14 the method of calculating the amount. It must also provide an itemized statement
15 of the charges owed by the owner. An owner has a right to review the
16 association's records to verify the debt. (Section 5660 of the Civil Code)

17 If a lien is recorded against an owner's property in error, the person who
18 recorded the lien is required to record a lien release within 21 days, and to provide
19 an owner certain documents in this regard. (Section 5685 of the Civil Code)

20 The collection practices of the association may be governed by state and federal
21 laws regarding fair debt collection. Penalties can be imposed for debt collection
22 practices that violate these laws.

23 PAYMENTS

24 When an owner makes a payment, the owner may request a receipt, and the
25 association is required to provide it. On the receipt, the association must indicate
26 the date of payment and the person who received it. The association must inform
27 owners of a mailing address for overnight payments. (Section 5655 of the Civil
28 Code)

29 An owner may, but is not obligated to, pay under protest any disputed charge or
30 sum levied by the association, including, but not limited to, an assessment, fine,
31 penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary
32 measure, and by so doing, specifically reserve the right to contest the disputed
33 charge or sum in court or otherwise.

34 An owner may dispute an assessment debt by submitting a written request for
35 dispute resolution to the association as set forth in Article 2 (commencing with
36 Section 5900) of Chapter 10 of Part 5 of Division 4 of the Civil Code. In addition,
37 an association may not initiate a foreclosure without participating in alternative
38 dispute resolution with a neutral third party as set forth in Article 3 (commencing
39 with Section 5925) of Chapter 10 of Part 5 of Division 4 of the Civil Code, if so
40 requested by the owner. Binding arbitration shall not be available if the association
41 intends to initiate a judicial foreclosure.

1 An owner is not liable for charges, interest, and costs of collection, if it is
2 established that the assessment was paid properly on time. (Section 5685 of the
3 Civil Code)

4 MEETINGS AND PAYMENT PLANS

5 An owner of a separate interest that is not a timeshare may request the
6 association to consider a payment plan to satisfy a delinquent assessment. The
7 association must inform owners of the standards for payment plans, if any exist.
8 (Section 5665 of the Civil Code)

9 The board must meet with an owner who makes a proper written request for a
10 meeting to discuss a payment plan when the owner has received a notice of a
11 delinquent assessment. These payment plans must conform with the payment plan
12 standards of the association, if they exist. (Section 5665 of the Civil Code)”

13 (b) An association distributing the notice required by this section to an owner of
14 an interest that is described in Section 11212 of the Business and Professions Code
15 that is not otherwise exempt from this section pursuant to subdivision (a) of
16 Section 11211.7 of the Business and Professions Code may delete from the notice
17 described in subdivision (a) the portion regarding meetings and payment plans.

18 **Comment.** Section 5730 continues former Section 1365.1 without change, except as indicated
19 below.

20 The following nonsubstantive changes were made:

- 21 • The introductory clause was revised to reflect distribution of this notice as part of the
22 annual policy statement.
- 23 • A limited exception for units in time shares was moved to subdivision (b), without any
24 substantive change.
- 25 • The substance of former Section 1365.1(c) was generalized in Section 4040(b).
- 26 • Erroneous references to “Division 2 of the Civil Code” were corrected. The references
27 should have been to “Part 2 of Division 2 of the Civil Code.”
- 28 • An erroneous reference to former Section 1368.810 was corrected. It should have
29 referred to former Section 1363.810.
- 30 • An erroneous reference to former Section 1367.1 in the last paragraph under the
31 heading “Payments” was corrected. The reference should have been to former Section
32 1367.5.
- 33 • Cross-references were updated throughout to reflect the new location of the referenced
34 provisions.
- 35 • The words “board of directors” were replaced with “board.” See Section 4085
36 (“board”).
- 37 • The words “common areas” were singularized.
- 38 • The words “he or she” were replaced with “owner.”

39 See also Sections 4080 (“association”), 4095 (“common area”), Section 4100 (“common
40 interest development”), 4150 (“governing documents”), 4160 (“member”), 4170 (“person”), 4185
41 (“separate interest”).

1 **§ 5735. Assignment or pledge**

2 5735. (a) An association may not voluntarily assign or pledge the association's
3 right to collect payments or assessments, or to enforce or foreclose a lien to a third
4 party, except when the assignment or pledge is made to a financial institution or
5 lender chartered or licensed under federal or state law, when acting within the
6 scope of that charter or license, as security for a loan obtained by the association.

7 (b) Nothing in subdivision (a) restricts the right or ability of an association to
8 assign any unpaid obligations of a former member to a third party for purposes of
9 collection.

10 **Comment.** Section 5735 continues the first sentence of former Section 1367.1(g) without
11 change, except as indicated below.

12 The following nonsubstantive changes were made:

- 13 • The provision was divided into subdivisions for ease of reference.
- 14 • An introductory clause was added in subdivision (b) to make the relationship between
15 the two provisions clearer.

16 See also Sections 4080 ("association"), 4160 ("member").

17 **§ 5740. Application of article**

18 5740. (a) Except as otherwise provided, this article applies to a lien created on or
19 after January 1, 2003.

20 (b) A lien created before January 1, 2003, is governed by the law in existence at
21 the time the lien was created.

22 **Comment.** Section 5740 is new. A lien created on or after January 1, 1986, and before January
23 1, 2003, is governed by former Section 1367. See 2002 Cal. Stat. ch. 111, § 7.

24 **CHAPTER 9. INSURANCE AND LIABILITY**

25 **§ 5800. Limitation of director and officer liability**

26 5800. (a) A volunteer officer or volunteer director of an association that
27 manages a common interest development that is exclusively residential, shall not
28 be personally liable in excess of the coverage of insurance specified in paragraph
29 (4) to any person who suffers injury, including, but not limited to, bodily injury,
30 emotional distress, wrongful death, or property damage or loss as a result of the
31 tortious act or omission of the volunteer officer or volunteer director if all of the
32 following criteria are met:

33 (1) The act or omission was performed within the scope of the officer's or
34 director's association duties.

35 (2) The act or omission was performed in good faith.

36 (3) The act or omission was not willful, wanton, or grossly negligent.

37 (4) The association maintained and had in effect at the time the act or omission
38 occurred and at the time a claim is made one or more policies of insurance that
39 shall include coverage for (A) general liability of the association and (B)
40 individual liability of officers and directors of the association for negligent acts or

1 omissions in that capacity; provided, that both types of coverage are in the
2 following minimum amount:

3 (A) At least five hundred thousand dollars (\$500,000) if the common interest
4 development consists of 100 or fewer separate interests.

5 (B) At least one million dollars (\$1,000,000) if the common interest
6 development consists of more than 100 separate interests.

7 (b) The payment of actual expenses incurred by a director or officer in the
8 execution of the duties of that position does not affect the director's or officer's
9 status as a volunteer within the meaning of this section.

10 (c) An officer or director who at the time of the act or omission was a declarant,
11 or who received either direct or indirect compensation as an employee from the
12 declarant, or from a financial institution that purchased a separate interest at a
13 judicial or nonjudicial foreclosure of a mortgage or deed of trust on real property,
14 is not a volunteer for the purposes of this section.

15 (d) Nothing in this section shall be construed to limit the liability of the
16 association for its negligent act or omission or for any negligent act or omission of
17 an officer or director of the association.

18 (e) This section shall only apply to a volunteer officer or director who is a tenant
19 of a separate interest in the common interest development or is an owner of no
20 more than two separate interests in the common interest development.

21 (f)(1) For purposes of paragraph (1) of subdivision (a), the scope of the officer's
22 or director's association duties shall include, but shall not be limited to, both of the
23 following decisions:

24 (A) Whether to conduct an investigation of the common interest development
25 for latent deficiencies prior to the expiration of the applicable statute of
26 limitations.

27 (B) Whether to commence a civil action against the builder for defects in design
28 or construction.

29 (2) It is the intent of the Legislature that this section clarify the scope of
30 association duties to which the protections against personal liability in this section
31 apply. It is not the intent of the Legislature that these clarifications be construed to
32 expand, or limit, the fiduciary duties owed by the directors or officers.

33 **Comment.** Section 5800 continues former Section 1365.7 without change, except as indicated
34 below.

35 The following nonsubstantive changes were made:

- 36 • Superfluous cross-references to governing definitions were not continued.
- 37 • Subdivision (a) was revised in two places to replace "which" with "that."

38 See also Corp. Code § 7231 (standard of care and liability of director of nonprofit mutual
39 benefit corporation).

40 See also Sections 4080 ("association"), 4100 ("common interest development"), 4130
41 ("declarant"), 4140 ("director"), 4170 ("person"), 4185 ("separate interest").

1 **§ 5805. Limitation of member liability**

2 5805. (a) It is the intent of the Legislature to offer civil liability protection to
3 owners of the separate interests in a common interest development that have
4 common area owned in tenancy-in-common if the association carries a certain
5 level of prescribed insurance that covers a cause of action in tort.

6 (b) Any cause of action in tort against any owner of a separate interest arising
7 solely by reason of an ownership interest as a tenant in common in the common
8 area of a common interest development shall be brought only against the
9 association and not against the individual owners of the separate interests, if both
10 of the insurance requirements in paragraphs (1) and (2) are met:

11 (1) The association maintained and has in effect for this cause of action, one or
12 more policies of insurance that include coverage for general liability of the
13 association.

14 (2) The coverage described in paragraph (1) is in the following minimum
15 amounts:

16 (A) At least two million dollars (\$2,000,000) if the common interest
17 development consists of 100 or fewer separate interests.

18 (B) At least three million dollars (\$3,000,000) if the common interest
19 development consists of more than 100 separate interests.

20 **Comment.** Section 5805 continues former Section 1365.9 without change, except as indicated
21 below.

22 The following nonsubstantive changes were made:

- 23 • A superfluous cross-reference to a governing definition was not continued.
- 24 • The words “common areas” were singularized.
- 25 • In subdivision (b)(1), the word “which” was replaced with “that.”

26 See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest
27 development”), 4185 (“separate interest”).

28 **§ 5810. Notice of change in coverage**

29 5810. The association shall, as soon as reasonably practicable, provide
30 individual notice pursuant to Section 4040 to all members if any of the policies
31 described in the annual budget report pursuant to Section 5300 have lapsed, been
32 canceled, and are not immediately renewed, restored, or replaced, or if there is a
33 significant change, such as a reduction in coverage or limits or an increase in the
34 deductible, as to any of those policies. If the association receives any notice of
35 nonrenewal of a policy described in the annual budget report pursuant to Section
36 5300, the association shall immediately notify its members if replacement
37 coverage will not be in effect by the date the existing coverage will lapse.

38 **Comment.** Section 5810 continues former Section 1365(f)(2) without change, except as
39 indicated below.

40 The following substantive change was made:

- 41 • The reference to delivery by first-class mail was replaced with a reference to individual
42 delivery pursuant to Section 4040.

43 The following nonsubstantive change was made:

- Cross-references were updated to reflect the new location of the referenced provisions.
See also Sections 4080 (“association”), 4160 (“member”).

CHAPTER 10. DISPUTE RESOLUTION AND ENFORCEMENT

Article 1. Discipline and Cost Reimbursement

§ 5850. Schedule of monetary penalties

5850. (a) If an association adopts or has adopted a policy imposing any monetary penalty, including any fee, on any association member for a violation of the governing documents, including any monetary penalty relating to the activities of a guest or invitee of the member, the board shall adopt and distribute to each member, in the annual policy statement prepared pursuant to Section 5310, a schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with authorization for member discipline contained in the governing documents.

(b) Any new or revised monetary penalty that is adopted after complying with subdivision (a) may be included in a supplement that is delivered to the members individually, pursuant to Section 4040.

(c) A monetary penalty for a violation of the governing documents shall not exceed the monetary penalty stated in the schedule of monetary penalties or supplement that is in effect at the time of the violation.

(d) An association shall provide a copy of the most recently distributed schedule of monetary penalties, along with any applicable supplements to that schedule, to any member on request.

Comment. Subdivision (a) of Section 5850 continues the first sentence of former Section 1363(g) without change, except as indicated below.

The following substantive changes were made:

- A reference to delivery by personal delivery or first class mail was changed to refer to delivery by inclusion in the annual policy statement prepared pursuant to Section 5310.
- “Invitee” was replaced with “tenant,” to make clear that the provision applies to tenants.

The following nonsubstantive changes were made:

- A reference to the “rules of the association” is superfluous and was not continued. The term “governing documents” encompasses rules. See Section 4150.
- The words “board of directors” were replaced with “board.” See Section 4085 (“board”).

Subdivisions (b)-(d) are new.

See also Sections 4080 (“association”), 4150 (“governing documents”), 4160 (“member”).

§ 5855. Hearing

5855. (a) When the board is to meet to consider or impose discipline upon a member, or to impose a monetary charge as a means of reimbursing the association for costs incurred by the association in the repair of damage to common area and facilities caused by a member or the member’s guest or tenant,

1 the board shall notify the member in writing, by either personal delivery or
2 individual delivery pursuant to Section 4040, at least 10 days prior to the meeting.

3 (b) The notification shall contain, at a minimum, the date, time, and place of the
4 meeting, the nature of the alleged violation for which a member may be
5 disciplined or the nature of the damage to the common area and facilities for
6 which a monetary charge may be imposed, and a statement that the member has a
7 right to attend and may address the board at the meeting. The board shall meet in
8 executive session if requested by the member.

9 (c) If the board imposes discipline on a member or imposes a monetary charge
10 on the member for damage to the common area and facilities, the board shall
11 provide the member a written notification of the decision, by either personal
12 delivery or individual delivery pursuant to Section 4040, within 15 days following
13 the action.

14 (d) A disciplinary action or the imposition of a monetary charge for damage to
15 the common area shall not be effective against a member unless the board fulfills
16 the requirements of this section.

17 **Comment.** Section 5855 continues former Section 1363(h) without change, except as indicated
18 below.

19 The following substantive changes were made:

- 20 • The scope of the provision was expanded to include an action to impose a monetary
21 charge on a member for damage to the common area.
- 22 • “Individual delivery” was substituted for first class mailing. See Section 4040.

23 The following nonsubstantive changes were made:

- 24 • The provision was divided into subdivisions for ease of reference.
- 25 • The word “subdivision” was replaced with “section.”
- 26 • The words “board of directors” and “board of directors of the association” were
27 replaced with “board.” See Section 4085 (“board”).

28 See also Sections 4080 (“association”), 4095 (“common area”), 4160 (“member”).

29 **§ 5865. No effect on authority of board**

30 5865. Nothing in Sections 5850 or 5855 shall be construed to create, expand, or
31 reduce the authority of the board to impose monetary penalties on a member for a
32 violation of the governing documents.

33 **Comment.** Section 5865 continues the substance of former Section 1363(j), except as indicated
34 below.

35 The following nonsubstantive changes were made:

- 36 • The words “board of directors of the association” were replaced with “board.”
- 37 • The words “or rules of the association” were not continued.
- 38 • The words “an association member” were replaced with “member.”
- 39 • The reference to Sections 5850 and 5855 is narrower than the reference in former
40 Section 1363(j), which encompassed the entirety of former Section 1363.

41 See also Sections 4085 (“board”), 4150 (“governing documents” includes the operating rules of
42 the association), 4160 (“member”).

Article 2. Internal Dispute Resolution

§ 5900. Application of article

5900. (a) This article applies to a dispute between an association and a member involving their rights, duties, or liabilities under this act, under the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code), or under the governing documents of the common interest development or association.

(b) This article supplements, and does not replace, Article 3 (commencing with Section 5925), relating to alternative dispute resolution as a prerequisite to an enforcement action.

Comment. Section 5900 continues former Section 1363.810 without change, except as indicated below.

The following nonsubstantive change was made:

- Cross-references were updated to reflect the new location of the referenced provisions.

See also Sections 4080 (“association”), 4100 (“common interest development”), 4150 (“governing documents”), 4160 (“member”).

§ 5905. Fair, reasonable, and expeditious dispute resolution procedure required

5905. (a) An association shall provide a fair, reasonable, and expeditious procedure for resolving a dispute within the scope of this article.

(b) In developing a procedure pursuant to this article, an association shall make maximum, reasonable use of available local dispute resolution programs involving a neutral third party, including low-cost mediation programs such as those listed on the Internet Web sites of the Department of Consumer Affairs and the United States Department of Housing and Urban Development.

(c) If an association does not provide a fair, reasonable, and expeditious procedure for resolving a dispute within the scope of this article, the procedure provided in Section 5915 applies and satisfies the requirement of subdivision (a).

Comment. Section 5905 continues former Section 1363.820 without change, except as indicated below.

The following nonsubstantive change was made:

- A cross-reference was updated to reflect the new location of the referenced provision.

See also Section 4080 (“association”).

§ 5910. Minimum requirements of association procedure

5910. A fair, reasonable, and expeditious dispute resolution procedure shall at a minimum satisfy all of the following requirements:

(a) The procedure may be invoked by either party to the dispute. A request invoking the procedure shall be in writing.

(b) The procedure shall provide for prompt deadlines. The procedure shall state the maximum time for the association to act on a request invoking the procedure.

(c) If the procedure is invoked by a member, the association shall participate in the procedure.

(d) If the procedure is invoked by the association, the member may elect not to participate in the procedure. If the member participates but the dispute is resolved other than by agreement of the member, the member shall have a right of appeal to the board.

(e) A resolution of a dispute pursuant to the procedure, which is not in conflict with the law or the governing documents, binds the association and is judicially enforceable. An agreement reached pursuant to the procedure, which is not in conflict with the law or the governing documents, binds the parties and is judicially enforceable.

(f) The procedure shall provide a means by which the member and the association may explain their positions.

(g) A member of the association shall not be charged a fee to participate in the process.

Comment. Section 5910 continues former Section 1363.830 without change, except as indicated below.

The following nonsubstantive changes were made:

- Subdivision (e) was revised to replace “that” with “which.”
- The words “association’s board of directors” were replaced with “board.” See Section 4085 (“board”).

See also Sections 4080 (“association”), 4150 (“governing documents”), 4160 (“member”).

§ 5915. Default meet and confer procedure

5915. (a) This section applies to an association that does not otherwise provide a fair, reasonable, and expeditious dispute resolution procedure. The procedure provided in this section is fair, reasonable, and expeditious, within the meaning of this article.

(b) Either party to a dispute within the scope of this article may invoke the following procedure:

(1) The party may request the other party to meet and confer in an effort to resolve the dispute. The request shall be in writing.

(2) A member of an association may refuse a request to meet and confer. The association may not refuse a request to meet and confer.

(3) The board shall designate a director to meet and confer.

(4) The parties shall meet promptly at a mutually convenient time and place, explain their positions to each other, and confer in good faith in an effort to resolve the dispute.

(5) A resolution of the dispute agreed to by the parties shall be memorialized in writing and signed by the parties, including the board designee on behalf of the association.

(c) An agreement reached under this section binds the parties and is judicially enforceable if both of the following conditions are satisfied:

(1) The agreement is not in conflict with law or the governing documents of the common interest development or association.

(2) The agreement is either consistent with the authority granted by the board to its designee or the agreement is ratified by the board.

(d) A member may not be charged a fee to participate in the process.

Comment. Section 5915 continues former Section 1363.840 without change, except as indicated below.

The following nonsubstantive changes were made:

- The words “in an association” were replaced with “to an association.”
- The words “association’s board of directors” were replaced with “board.”
- The words “of the association” and “of the common interest development or association” were not continued.
- The words “board member” were replaced with “director.” See Section 4140 (“director”).

See also Sections 4080 (“association”), 4085 (“board”), 4100 (“common interest development”), 4160 (“member”), 4150 (“governing documents”).

§ 5920. Notice in policy statement

5920. The annual policy statement prepared pursuant to Section 5310 shall include a description of the internal dispute resolution process provided pursuant to this article.

Comment. Section 5920 continues former Section 1363.850 without change, except as indicated below.

The following nonsubstantive change was made:

- A reference to a notice delivered pursuant to former Section 1369.590 was changed to refer to distribution as part of the annual policy statement prepared pursuant to Section 5310.

Article 3. Alternative Dispute Resolution Prerequisite to Civil Action

§ 5925. Definitions

5925. As used in this article:

(a) “Alternative dispute resolution” means mediation, arbitration, conciliation, or other nonjudicial procedure that involves a neutral party in the decisionmaking process. The form of alternative dispute resolution chosen pursuant to this article may be binding or nonbinding, with the voluntary consent of the parties.

(b) “Enforcement action” means a civil action or proceeding, other than a cross-complaint, for any of the following purposes:

(1) Enforcement of this act.

(2) Enforcement of the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code).

(3) Enforcement of the governing documents.

Comment. Section 5925 continues former Section 1369.510 without change, except as indicated below.

The following nonsubstantive changes were made:

- Subdivision (b)(1) was revised to replace “title” with “act.”
- The words “of a common interest development” were not continued in subdivision (b)(3).

See also Section 4150 (“governing documents”).

§ 5930. ADR prerequisite to enforcement action

5930. (a) An association or a member may not file an enforcement action in the superior court unless the parties have endeavored to submit their dispute to alternative dispute resolution pursuant to this article.

(b) This section applies only to an enforcement action that is solely for declaratory, injunctive, or writ relief, or for that relief in conjunction with a claim for monetary damages not in excess of the jurisdictional limits stated in Sections 116.220 and 116.221 of the Code of Civil Procedure.

(c) This section does not apply to a small claims action.

(d) Except as otherwise provided by law, this section does not apply to an assessment dispute.

Comment. Section 5930 continues former Section 1369.520 without change, except as indicated below.

The following nonsubstantive changes were made:

- The words “of a common interest development” were not continued.
- The word “owner” was replaced with “member.” See Section 4160 (“member”).

See also Section 4080 (“association”).

§ 5935. Request for resolution

5935. (a) Any party to a dispute may initiate the process required by Section 5930 by serving on all other parties to the dispute a Request for Resolution. The Request for Resolution shall include all of the following:

(1) A brief description of the dispute between the parties.

(2) A request for alternative dispute resolution.

(3) A notice that the party receiving the Request for Resolution is required to respond within 30 days of receipt or the request will be deemed rejected.

(4) If the party on whom the request is served is the member, a copy of this article.

(b) Service of the Request for Resolution shall be by personal delivery, first-class mail, express mail, facsimile transmission, or other means reasonably calculated to provide the party on whom the request is served actual notice of the request.

(c) A party on whom a Request for Resolution is served has 30 days following service to accept or reject the request. If a party does not accept the request within that period, the request is deemed rejected by the party.

Comment. Section 5935 continues former Section 1369.530 without change, except as indicated below.

The following nonsubstantive change was made:

- The word “owner” was replaced with “member.” See Section 4160 (“member”).

1 **§ 5940. ADR process**

2 5940. (a) If the party on whom a Request for Resolution is served accepts the
3 request, the parties shall complete the alternative dispute resolution within 90 days
4 after the party initiating the request receives the acceptance, unless this period is
5 extended by written stipulation signed by both parties.

6 (b) Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence
7 Code applies to any form of alternative dispute resolution initiated by a Request
8 for Resolution under this article, other than arbitration.

9 (c) The costs of the alternative dispute resolution shall be borne by the parties.

10 **Comment.** Section 5940 continues former Section 1369.540 without change.

11 **§ 5945. Tolling of statute of limitations**

12 5945. If a Request for Resolution is served before the end of the applicable time
13 limitation for commencing an enforcement action, the time limitation is tolled
14 during the following periods:

15 (a) The period provided in Section 5935 for response to a Request for
16 Resolution.

17 (b) If the Request for Resolution is accepted, the period provided by Section
18 5940 for completion of alternative dispute resolution, including any extension of
19 time stipulated to by the parties pursuant to Section 5940.

20 **Comment.** Section 5945 continues former Section 1369.550 without change, except as
21 indicated below.

22 The following nonsubstantive change was made:

- 23 • Cross-references were updated to reflect the new location of the referenced provisions.

24 **§ 5950. Certification of efforts to resolve dispute**

25 5950. (a) At the time of commencement of an enforcement action, the party
26 commencing the action shall file with the initial pleading a certificate stating that
27 one or more of the following conditions is satisfied:

28 (1) Alternative dispute resolution has been completed in compliance with this
29 article.

30 (2) One of the other parties to the dispute did not accept the terms offered for
31 alternative dispute resolution.

32 (3) Preliminary or temporary injunctive relief is necessary.

33 (b) Failure to file a certificate pursuant to subdivision (a) is grounds for a
34 demurrer or a motion to strike unless the court finds that dismissal of the action for
35 failure to comply with this article would result in substantial prejudice to one of
36 the parties.

37 **Comment.** Section 5950 continues former Section 1369.560 without change.

38 **§ 5955. Stay of litigation for dispute resolution**

39 5955. (a) After an enforcement action is commenced, on written stipulation of
40 the parties, the matter may be referred to alternative dispute resolution. The

1 referred action is stayed. During the stay, the action is not subject to the rules
2 implementing subdivision (c) of Section 68603 of the Government Code.

3 (b) The costs of the alternative dispute resolution shall be borne by the parties.

4 **Comment.** Section 5955 continues former Section 1369.570 without change.

5 **§ 5960. Attorney's fees**

6 5960. In an enforcement action in which fees and costs may be awarded, the
7 court, in determining the amount of the award, may consider whether a party's
8 refusal to participate in alternative dispute resolution before commencement of the
9 action was reasonable.

10 **Comment.** Section 5960 generalizes former Section 1369.580 so that it applies to any
11 enforcement action in which fees and costs may be awarded and not just to an action to enforce
12 the governing documents.

13 **§ 5965. Notice in annual policy statement**

14 5965. (a) An association shall annually provide its members a summary of the
15 provisions of this article that specifically references this article. The summary
16 shall include the following language:

17 "Failure of a member of the association to comply with the alternative dispute
18 resolution requirements of Section 5930 of the Civil Code may result in the loss of
19 the member's right to sue the association or another member of the association
20 regarding enforcement of the governing documents or the applicable law."

21 (b) The summary shall be included in the annual policy statement prepared
22 pursuant to Section 5310.

23 **Comment.** Subdivision (a) of Section 5965 continues former Section 1369.590(a), except as
24 indicated below.

25 The following nonsubstantive changes were made:

- 26 • A cross-reference was updated to reflect the new location of the referenced provision.
- 27 • The pronoun "your" was replaced with "the member's" to improve the clarity of the
- 28 notice.

29 Subdivision (b) is similar to the first sentence of former Section 1369.590(b).

30 See also Sections 4080 ("association"), 4150 ("governing documents"), 4160 ("member").

31 **Article 4. Civil Actions**

32 **§ 5975. Enforcement of governing documents**

33 5975. (a) The covenants and restrictions in the declaration shall be enforceable
34 equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind
35 all owners of separate interests in the development. Unless the declaration states
36 otherwise, these servitudes may be enforced by any owner of a separate interest or
37 by the association, or by both.

38 (b) A governing document other than the declaration may be enforced by the
39 association against an owner of a separate interest or by an owner of a separate
40 interest against the association.

1 (c) In an action to enforce the governing documents, the prevailing party shall be
2 awarded reasonable attorney's fees and costs.

3 **Comment.** Section 5975 continues former Section 1354 without change.

4 See also Sections 4080 ("association"), 4135 ("declaration"), 4150 ("governing documents"),
5 4185 ("separate interest").

6 **§ 5980. Standing**

7 5980. An association has standing to institute, defend, settle, or intervene in
8 litigation, arbitration, mediation, or administrative proceedings in its own name as
9 the real party in interest and without joining with it the members, in matters
10 pertaining to the following:

11 (a) Enforcement of the governing documents.

12 (b) Damage to the common area.

13 (c) Damage to a separate interest that the association is obligated to maintain or
14 repair.

15 (d) Damage to a separate interest that arises out of, or is integrally related to,
16 damage to the common area or a separate interest that the association is obligated
17 to maintain or repair.

18 **Comment.** Section 5980 continues former Section 1368.3 without change, except as indicated
19 below.

20 The following nonsubstantive changes were made:

- 21 • The word "owner" was replaced with "member." See Section 4160 ("member").
- 22 • The words "established to manage a common interest development" were not
23 continued.

24 See also Sections 4080 ("association"), 4095 ("common area"), 4150 ("governing
25 documents"), 4185 ("separate interest").

26 **§ 5985. Comparative fault**

27 5985. (a) In an action maintained by an association pursuant to subdivision (b),
28 (c), or (d) of Section 5980, the amount of damages recovered by the association
29 shall be reduced by the amount of damages allocated to the association or its
30 managing agents in direct proportion to their percentage of fault based upon
31 principles of comparative fault. The comparative fault of the association or its
32 managing agents may be raised by way of defense, but shall not be the basis for a
33 cross-action or separate action against the association or its managing agents for
34 contribution or implied indemnity, where the only damage was sustained by the
35 association or its members. It is the intent of the Legislature in enacting this
36 subdivision to require that comparative fault be pleaded as an affirmative defense,
37 rather than a separate cause of action, where the only damage was sustained by the
38 association or its members.

39 (b) In an action involving damages described in subdivision (b), (c), or (d) of
40 Section 5980, the defendant or cross-defendant may allege and prove the
41 comparative fault of the association or its managing agents as a setoff to the
42 liability of the defendant or cross-defendant even if the association is not a party to

1 the litigation or is no longer a party whether by reason of settlement, dismissal, or
2 otherwise.

3 (c) Subdivisions (a) and (b) apply to actions commenced on or after January 1,
4 1993.

5 (d) Nothing in this section affects a person's liability under Section 1431, or the
6 liability of the association or its managing agent for an act or omission that causes
7 damages to another.

8 **Comment.** Section 5985 continues former Section 1368.4 without change.

9 See also Sections 4080 ("association"), 4155 ("managing agent"), 4160 ("member"), 4170
10 ("person").

11 CHAPTER 11. CONSTRUCTION DEFECT LITIGATION

12 § 6000. Actions for damages

13 6000. (a) Before an association files a complaint for damages against a builder,
14 developer, or general contractor ("respondent") of a common interest development
15 based upon a claim for defects in the design or construction of the common
16 interest development, all of the requirements of this section shall be satisfied with
17 respect to the builder, developer, or general contractor.

18 (b) The association shall serve upon the respondent a "Notice of
19 Commencement of Legal Proceedings." The notice shall be served by certified
20 mail to the registered agent of the respondent, or if there is no registered agent,
21 then to any officer of the respondent. If there are no current officers of the
22 respondent, service shall be upon the person or entity otherwise authorized by law
23 to receive service of process. Service upon the general contractor shall be
24 sufficient to initiate the process set forth in this section with regard to any builder
25 or developer, if the builder or developer is not amenable to service of process by
26 the foregoing methods. This notice shall toll all applicable statutes of limitation
27 and repose, whether contractual or statutory, by and against all potentially
28 responsible parties, regardless of whether they were named in the notice, including
29 claims for indemnity applicable to the claim for the period set forth in subdivision
30 (c). The notice shall include all of the following:

31 (1) The name and location of the project.

32 (2) An initial list of defects sufficient to apprise the respondent of the general
33 nature of the defects at issue.

34 (3) A description of the results of the defects, if known.

35 (4) A summary of the results of a survey or questionnaire distributed to
36 homeowners to determine the nature and extent of defects, if a survey has been
37 conducted or a questionnaire has been distributed.

38 (5) Either a summary of the results of testing conducted to determine the nature
39 and extent of defects or the actual test results, if that testing has been conducted.

40 (c) Service of the notice shall commence a period, not to exceed 180 days,
41 during which the association, the respondent, and all other participating parties

1 shall try to resolve the dispute through the processes set forth in this section. This
2 180-day period may be extended for one additional period, not to exceed 180 days,
3 only upon the mutual agreement of the association, the respondent, and any parties
4 not deemed peripheral pursuant to paragraph (3) of subdivision (e). Any
5 extensions beyond the first extension shall require the agreement of all
6 participating parties. Unless extended, the dispute resolution process prescribed by
7 this section shall be deemed completed. All extensions shall continue the tolling
8 period described in subdivision (b).

9 (d) Within 25 days of the date the association serves the Notice of
10 Commencement of Legal Proceedings, the respondent may request in writing to
11 meet and confer with the board. Unless the respondent and the association
12 otherwise agree, there shall be not more than one meeting, which shall take place
13 no later than 10 days from the date of the respondent's written request, at a
14 mutually agreeable time and place. The meeting shall be subject to subdivision (a)
15 of Section 4925 and subdivisions (a) and (b) of Section 4935. The discussions at
16 the meeting are privileged communications and are not admissible in evidence in
17 any civil action, unless the association and the respondent consent in writing to
18 their admission.

19 (e) Upon receipt of the notice, the respondent shall, within 60 days, comply with
20 the following:

21 (1) The respondent shall provide the association with access to, for inspection
22 and copying of, all plans and specifications, subcontracts, and other construction
23 files for the project that are reasonably calculated to lead to the discovery of
24 admissible evidence regarding the defects claimed. The association shall provide
25 the respondent with access to, for inspection and copying of, all files reasonably
26 calculated to lead to the discovery of admissible evidence regarding the defects
27 claimed, including all reserve studies, maintenance records and any survey
28 questionnaires, or results of testing to determine the nature and extent of defects.
29 To the extent any of the above documents are withheld based on privilege, a
30 privilege log shall be prepared and submitted to all other parties. All other
31 potentially responsible parties shall have the same rights as the respondent
32 regarding the production of documents upon receipt of written notice of the claim,
33 and shall produce all relevant documents within 60 days of receipt of the notice of
34 the claim.

35 (2) The respondent shall provide written notice by certified mail to all
36 subcontractors, design professionals, their insurers, and the insurers of any
37 additional insured whose identities are known to the respondent or readily
38 ascertainable by review of the project files or other similar sources and whose
39 potential responsibility appears on the face of the notice. This notice to
40 subcontractors, design professionals, and insurers shall include a copy of the
41 Notice of Commencement of Legal Proceedings, and shall specify the date and
42 manner by which the parties shall meet and confer to select a dispute resolution
43 facilitator pursuant to paragraph (1) of subdivision (f), advise the recipient of its

1 obligation to participate in the meet and confer or serve a written acknowledgment
2 of receipt regarding this notice, advise the recipient that it will waive any
3 challenge to selection of the dispute resolution facilitator if it elects not to
4 participate in the meet and confer, advise the recipient that it may seek the
5 assistance of an attorney, and advise the recipient that it should contact its insurer,
6 if any. Any subcontractor or design professional, or insurer for that subcontractor,
7 design professional, or additional insured, who receives written notice from the
8 respondent regarding the meet and confer shall, prior to the meet and confer, serve
9 on the respondent a written acknowledgment of receipt. That subcontractor or
10 design professional shall, within 10 days of service of the written acknowledgment
11 of receipt, provide to the association and the respondent a Statement of Insurance
12 that includes both of the following:

13 (A) The names, addresses, and contact persons, if known, of all insurance
14 carriers, whether primary or excess and regardless of whether a deductible or self-
15 insured retention applies, whose policies were in effect from the commencement
16 of construction of the subject project to the present and which potentially cover the
17 subject claims.

18 (B) The applicable policy numbers for each policy of insurance provided.

19 (3) Any subcontractor or design professional, or insurer for that subcontractor,
20 design professional, or additional insured, who so chooses, may, at any time, make
21 a written request to the dispute resolution facilitator for designation as a peripheral
22 party. That request shall be served contemporaneously on the association and the
23 respondent. If no objection to that designation is received within 15 days, or upon
24 rejection of that objection, the dispute resolution facilitator shall designate that
25 subcontractor or design professional as a peripheral party, and shall thereafter seek
26 to limit the attendance of that subcontractor or design professional only to those
27 dispute resolution sessions deemed peripheral party sessions or to those sessions
28 during which the dispute resolution facilitator believes settlement as to peripheral
29 parties may be finalized. Nothing in this subdivision shall preclude a party who
30 has been designated a peripheral party from being reclassified as a nonperipheral
31 party, nor shall this subdivision preclude a party designated as a nonperipheral
32 party from being reclassified as a peripheral party after notice to all parties and an
33 opportunity to object. For purposes of this subdivision, a peripheral party is a party
34 having total claimed exposure of less than twenty-five thousand dollars (\$25,000).

35 (f)(1) Within 20 days of sending the notice set forth in paragraph (2) of
36 subdivision (e), the association, respondent, subcontractors, design professionals,
37 and their insurers who have been sent a notice as described in paragraph (2) of
38 subdivision (e) shall meet and confer in an effort to select a dispute resolution
39 facilitator to preside over the mandatory dispute resolution process prescribed by
40 this section. Any subcontractor or design professional who has been given timely
41 notice of this meeting but who does not participate, waives any challenge he or she
42 may have as to the selection of the dispute resolution facilitator. The role of the
43 dispute resolution facilitator is to attempt to resolve the conflict in a fair manner.

1 The dispute resolution facilitator shall be sufficiently knowledgeable in the subject
2 matter and be able to devote sufficient time to the case. The dispute resolution
3 facilitator shall not be required to reside in or have an office in the county in which
4 the project is located. The dispute resolution facilitator and the participating
5 parties shall agree to a date, time, and location to hold a case management meeting
6 of all parties and the dispute resolution facilitator, to discuss the claims being
7 asserted and the scheduling of events under this section. The case management
8 meeting with the dispute resolution facilitator shall be held within 100 days of
9 service of the Notice of Commencement of Legal Proceedings at a location in the
10 county where the project is located. Written notice of the case management
11 meeting with the dispute resolution facilitator shall be sent by the respondent to
12 the association, subcontractors and design professionals, and their insurers who are
13 known to the respondent to be on notice of the claim, no later than 10 days prior to
14 the case management meeting, and shall specify its date, time, and location. The
15 dispute resolution facilitator in consultation with the respondent shall maintain a
16 contact list of the participating parties.

17 (2) No later than 10 days prior to the case management meeting, the dispute
18 resolution facilitator shall disclose to the parties all matters that could cause a
19 person aware of the facts to reasonably entertain a doubt that the proposed dispute
20 resolution facilitator would be able to resolve the conflict in a fair manner. The
21 facilitator's disclosure shall include the existence of any ground specified in
22 Section 170.1 of the Code of Civil Procedure for disqualification of a judge, any
23 attorney-client relationship the facilitator has or had with any party or lawyer for a
24 party to the dispute resolution process, and any professional or significant personal
25 relationship the facilitator or his or her spouse or minor child living in the
26 household has or had with any party to the dispute resolution process. The
27 disclosure shall also be provided to any subsequently noticed subcontractor or
28 design professional within 10 days of the notice.

29 (3) A dispute resolution facilitator shall be disqualified by the court if he or she
30 fails to comply with this subdivision and any party to the dispute resolution
31 process serves a notice of disqualification prior to the case management meeting.
32 If the dispute resolution facilitator complies with this subdivision, he or she shall
33 be disqualified by the court on the basis of the disclosure if any party to the
34 dispute resolution process serves a notice of disqualification prior to the case
35 management meeting.

36 (4) If the parties cannot mutually agree to a dispute resolution facilitator, then
37 each party shall submit a list of three dispute resolution facilitators. Each party
38 may then strike one nominee from the other parties' list, and petition the court,
39 pursuant to the procedure described in subdivisions (n) and (o), for final selection
40 of the dispute resolution facilitator. The court may issue an order for final
41 selection of the dispute resolution facilitator pursuant to this paragraph.

42 (5) Any subcontractor or design professional who receives notice of the
43 association's claim without having previously received timely notice of the meet

1 and confer to select the dispute resolution facilitator shall be notified by the
2 respondent regarding the name, address, and telephone number of the dispute
3 resolution facilitator. Any such subcontractor or design professional may serve
4 upon the parties and the dispute resolution facilitator a written objection to the
5 dispute resolution facilitator within 15 days of receiving notice of the claim.
6 Within seven days after service of this objection, the subcontractor or design
7 professional may petition the superior court to replace the dispute resolution
8 facilitator. The court may replace the dispute resolution facilitator only upon a
9 showing of good cause, liberally construed. Failure to satisfy the deadlines set
10 forth in this subdivision shall constitute a waiver of the right to challenge the
11 dispute resolution facilitator.

12 (6) The costs of the dispute resolution facilitator shall be apportioned in the
13 following manner: one-third to be paid by the association; one-third to be paid by
14 the respondent; and one-third to be paid by the subcontractors and design
15 professionals, as allocated among them by the dispute resolution facilitator. The
16 costs of the dispute resolution facilitator shall be recoverable by the prevailing
17 party in any subsequent litigation pursuant to Section 1032 of the Code of Civil
18 Procedure, provided however that any nonsettling party may, prior to the filing of
19 the complaint, petition the facilitator to reallocate the costs of the dispute
20 resolution facilitator as they apply to any nonsettling party. The determination of
21 the dispute resolution facilitator with respect to the allocation of these costs shall
22 be binding in any subsequent litigation. The dispute resolution facilitator shall take
23 into account all relevant factors and equities between all parties in the dispute
24 resolution process when reallocating costs.

25 (7) In the event the dispute resolution facilitator is replaced at any time, the case
26 management statement created pursuant to subdivision (h) shall remain in full
27 force and effect.

28 (8) The dispute resolution facilitator shall be empowered to enforce all
29 provisions of this section.

30 (g)(1) No later than the case management meeting, the parties shall begin to
31 generate a data compilation showing the following information regarding the
32 alleged defects at issue:

33 (A) The scope of the work performed by each potentially responsible
34 subcontractor.

35 (B) The tract or phase number in which each subcontractor provided goods or
36 services, or both.

37 (C) The units, either by address, unit number, or lot number, at which each
38 subcontractor provided goods or services, or both.

39 (2) This data compilation shall be updated as needed to reflect additional
40 information. Each party attending the case management meeting, and any
41 subsequent meeting pursuant to this section, shall provide all information available
42 to that party relevant to this data compilation.

1 (h) At the case management meeting, the parties shall, with the assistance of the
2 dispute resolution facilitator, reach agreement on a case management statement,
3 which shall set forth all of the elements set forth in paragraphs (1) to (8), inclusive,
4 except that the parties may dispense with one or more of these elements if they
5 agree that it is appropriate to do so. The case management statement shall provide
6 that the following elements shall take place in the following order:

7 (1) Establishment of a document depository, located in the county where the
8 project is located, for deposit of documents, defect lists, demands, and other
9 information provided for under this section. All documents exchanged by the
10 parties and all documents created pursuant to this subdivision shall be deposited in
11 the document depository, which shall be available to all parties throughout the
12 prefiling dispute resolution process and in any subsequent litigation. When any
13 document is deposited in the document depository, the party depositing the
14 document shall provide written notice identifying the document to all other parties.
15 The costs of maintaining the document depository shall be apportioned among the
16 parties in the same manner as the costs of the dispute resolution facilitator.

17 (2) Provision of a more detailed list of defects by the association to the
18 respondent after the association completes a visual inspection of the project. This
19 list of defects shall provide sufficient detail for the respondent to ensure that all
20 potentially responsible subcontractors and design professionals are provided with
21 notice of the dispute resolution process. If not already completed prior to the case
22 management meeting, the Notice of Commencement of Legal Proceedings shall be
23 served by the respondent on all additional subcontractors and design professionals
24 whose potential responsibility appears on the face of the more detailed list of
25 defects within seven days of receipt of the more detailed list. The respondent shall
26 serve a copy of the case management statement, including the name, address, and
27 telephone number of the dispute resolution facilitator, to all the potentially
28 responsible subcontractors and design professionals at the same time.

29 (3) Nonintrusive visual inspection of the project by the respondent,
30 subcontractors, and design professionals.

31 (4) Invasive testing conducted by the association, if the association deems
32 appropriate. All parties may observe and photograph any testing conducted by the
33 association pursuant to this paragraph, but may not take samples or direct testing
34 unless, by mutual agreement, costs of testing are shared by the parties.

35 (5) Provision by the association of a comprehensive demand which provides
36 sufficient detail for the parties to engage in meaningful dispute resolution as
37 contemplated under this section.

38 (6) Invasive testing conducted by the respondent, subcontractors, and design
39 professionals, if they deem appropriate.

40 (7) Allowance for modification of the demand by the association if new issues
41 arise during the testing conducted by the respondent, subcontractor, or design
42 professionals.

1 (8) Facilitated dispute resolution of the claim, with all parties, including
2 peripheral parties, as appropriate, and insurers, if any, present and having
3 settlement authority. The dispute resolution facilitators shall endeavor to set
4 specific times for the attendance of specific parties at dispute resolution sessions.
5 If the dispute resolution facilitator does not set specific times for the attendance of
6 parties at dispute resolution sessions, the dispute resolution facilitator shall permit
7 those parties to participate in dispute resolution sessions by telephone.

8 (i) In addition to the foregoing elements of the case management statement
9 described in subdivision (h), upon mutual agreement of the parties, the dispute
10 resolution facilitator may include any or all of the following elements in a case
11 management statement: the exchange of consultant or expert photographs; expert
12 presentations; expert meetings; or any other mechanism deemed appropriate by the
13 parties in the interest of resolving the dispute.

14 (j) The dispute resolution facilitator, with the guidance of the parties, shall at the
15 time the case management statement is established, set deadlines for the
16 occurrence of each event set forth in the case management statement, taking into
17 account such factors as the size and complexity of the case, and the requirement of
18 this section that this dispute resolution process not exceed 180 days absent
19 agreement of the parties to an extension of time.

20 (k)(1)(A) At a time to be determined by the dispute resolution facilitator, the
21 respondent may submit to the association all of the following:

22 (i) A request to meet with the board to discuss a written settlement offer.

23 (ii) A written settlement offer, and a concise explanation of the reasons for the
24 terms of the offer.

25 (iii) A statement that the respondent has access to sufficient funds to satisfy the
26 conditions of the settlement offer.

27 (iv) A summary of the results of testing conducted for the purposes of
28 determining the nature and extent of defects, if this testing has been conducted,
29 unless the association provided the respondent with actual test results.

30 (B) If the respondent does not timely submit the items required by this
31 subdivision, the association shall be relieved of any further obligation to satisfy
32 the requirements of this subdivision only.

33 (C) No less than 10 days after the respondent submits the items required by this
34 paragraph, the respondent and the board shall meet and confer about the
35 respondent's settlement offer.

36 (D) If the board rejects a settlement offer presented at the meeting held pursuant
37 to this subdivision, the board shall hold a meeting open to each member of the
38 association. The meeting shall be held no less than 15 days before the association
39 commences an action for damages against the respondent.

40 (E) No less than 15 days before this meeting is held, a written notice shall be
41 sent to each member of the association specifying all of the following:

42 (i) That a meeting will take place to discuss problems that may lead to the filing
43 of a civil action, and the time and place of this meeting.

1 (ii) The options that are available to address the problems, including the filing of
2 a civil action and a statement of the various alternatives that are reasonably
3 foreseeable by the association to pay for those options and whether these payments
4 are expected to be made from the use of reserve account funds or the imposition of
5 regular or special assessments, or emergency assessment increases.

6 (iii) The complete text of any written settlement offer, and a concise explanation
7 of the specific reasons for the terms of the offer submitted to the board at the
8 meeting held pursuant to subdivision (d) that was received from the respondent.

9 (F) The respondent shall pay all expenses attributable to sending the settlement
10 offer to all members of the association. The respondent shall also pay the expense
11 of holding the meeting, not to exceed three dollars (\$3) per association member.

12 (G) The discussions at the meeting and the contents of the notice and the items
13 required to be specified in the notice pursuant to paragraph (E) are privileged
14 communications and are not admissible in evidence in any civil action, unless the
15 association consents to their admission.

16 (H) No more than one request to meet and discuss a written settlement offer may
17 be made by the respondent pursuant to this subdivision.

18 (I) All defect lists and demands, communications, negotiations, and settlement
19 offers made in the course of the prelitigation dispute resolution process provided
20 by this section shall be inadmissible pursuant to Sections 1119 to 1124, inclusive,
21 of the Evidence Code and all applicable decisional law. This inadmissibility shall
22 not be extended to any other documents or communications which would not
23 otherwise be deemed inadmissible.

24 (m) Any subcontractor or design professional may, at any time, petition the
25 dispute resolution facilitator to release that party from the dispute resolution
26 process upon a showing that the subcontractor or design professional is not
27 potentially responsible for the defect claims at issue. The petition shall be served
28 contemporaneously on all other parties, who shall have 15 days from the date of
29 service to object. If a subcontractor or design professional is released, and it later
30 appears to the dispute resolution facilitator that it may be a responsible party in
31 light of the current defect list or demand, the respondent shall renounce the party as
32 provided by paragraph (2) of subdivision (e), provide a copy of the current defect
33 list or demand, and direct the party to attend a dispute resolution session at a stated
34 time and location. A party who subsequently appears after having been released by
35 the dispute resolution facilitator shall not be prejudiced by its absence from the
36 dispute resolution process as the result of having been previously released by the
37 dispute resolution facilitator.

38 (n) Any party may, at any time, petition the superior court in the county where
39 the project is located, upon a showing of good cause, and the court may issue an
40 order, for any of the following, or for appointment of a referee to resolve a dispute
41 regarding any of the following:

1 (1) To take a deposition of any party to the process, or subpoena a third party for
2 deposition or production of documents, which is necessary to further prelitigation
3 resolution of the dispute.

4 (2) To resolve any disputes concerning inspection, testing, production of
5 documents, or exchange of information provided for under this section.

6 (3) To resolve any disagreements relative to the timing or contents of the case
7 management statement.

8 (4) To authorize internal extensions of timeframes set forth in the case
9 management statement.

10 (5) To seek a determination that a settlement is a good faith settlement pursuant
11 to Section 877.6 of the Code of Civil Procedure and all related authorities. The
12 page limitations and meet and confer requirements specified in this section shall
13 not apply to these motions, which may be made on shortened notice. Instead, these
14 motions shall be subject to other applicable state law, rules of court, and local
15 rules. A determination made by the court pursuant to this motion shall have the
16 same force and effect as the determination of a postfiling application or motion for
17 good faith settlement.

18 (6) To ensure compliance, on shortened notice, with the obligation to provide a
19 Statement of Insurance pursuant to paragraph (2) of subdivision (e).

20 (7) For any other relief appropriate to the enforcement of the provisions of this
21 section, including the ordering of parties, and insurers, if any, to the dispute
22 resolution process with settlement authority.

23 (o)(1) A petition filed pursuant to subdivision (n) shall be filed in the superior
24 court in the county in which the project is located. The court shall hear and decide
25 the petition within 10 days after filing. The petitioning party shall serve the
26 petition on all parties, including the date, time, and location of the hearing no later
27 than five business days prior to the hearing. Any responsive papers shall be filed
28 and served no later than three business days prior to the hearing. Any petition or
29 response filed under this section shall be no more than three pages in length.

30 (2) All parties shall meet with the dispute resolution facilitator, if one has been
31 appointed and confer in person or by the telephone prior to the filing of that
32 petition to attempt to resolve the matter without requiring court intervention.

33 (p) As used in this section:

34 (1) "Association" shall have the same meaning as defined in Section 4080.

35 (2) "Builder" means the declarant, as defined in Section 4130.

36 (3) "Common interest development" shall have the same meaning as in Section
37 4100, except that it shall not include developments or projects with less than 20
38 units.

39 (q) The alternative dispute resolution process and procedures described in this
40 section shall have no application or legal effect other than as described in this
41 section.

42 (r) This section shall become operative on July 1, 2002, however it shall not
43 apply to any pending suit or claim for which notice has previously been given.

(s) This section shall become inoperative on July 1, 2017, and, as of January 1, 2018, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2018, deletes or extends the dates on which it becomes inoperative and is repealed.

Comment. Section 6000 continues former Section 1375 without change, except as indicated below.

The following nonsubstantive changes were made:

- Cross-references were updated to reflect the new location of the referenced provisions.
- The words “board of directors” and “board of directors of the association” were replaced throughout with “board.” See Section 4085 (“board”).
- Subdivision (e)(2) was revised to delete references to former Section 1375.05, which was repealed by its own terms on January 1, 2011.
- Subdivision (f)(3) was revised to correct erroneous references to “this paragraph.” The revised provision refers to “this subdivision.”
- Subdivision (l) was revised to delete a reference to former Section 1375.05, which was repealed by its own terms on January 1, 2011.

See also Sections 4080 (“association”), 4100 (“common interest development”), 4160 (“member”), 4170 (“person”), 4177 (“reserve accounts”).

§ 6100. Notice of resolution

6100. (a) As soon as is reasonably practicable after the association and the builder have entered into a settlement agreement or the matter has otherwise been resolved regarding alleged defects in the common areas, alleged defects in the separate interests that the association is obligated to maintain or repair, or alleged defects in the separate interests that arise out of, or are integrally related to, defects in the common areas or separate interests that the association is obligated to maintain or repair, where the defects giving rise to the dispute have not been corrected, the association shall, in writing, inform only the members of the association whose names appear on the records of the association that the matter has been resolved, by settlement agreement or other means, and disclose all of the following:

(1) A general description of the defects that the association reasonably believes, as of the date of the disclosure, will be corrected or replaced.

(2) A good faith estimate, as of the date of the disclosure, of when the association believes that the defects identified in paragraph (1) will be corrected or replaced. The association may state that the estimate may be modified.

(3) The status of the claims for defects in the design or construction of the common interest development that were not identified in paragraph (1) whether expressed in a preliminary list of defects sent to each member of the association or otherwise claimed and disclosed to the members of the association.

(b) Nothing in this section shall preclude an association from amending the disclosures required pursuant to subdivision (a), and any amendments shall supersede any prior conflicting information disclosed to the members of the association and shall retain any privilege attached to the original disclosures.

1 (c) Disclosure of the information required pursuant to subdivision (a) or
2 authorized by subdivision (b) shall not waive any privilege attached to the
3 information.

4 (d) For the purposes of the disclosures required pursuant to this section, the term
5 “defects” shall be defined to include any damage resulting from defects.

6 **Comment.** Section 6100 continues former Section 1375.1 without change.

7 See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest
8 development”), 4160 (“member”), 4185 (“separate interest”).

9 **§ 6150. Notice of civil action**

10 6150. (a) Not later than 30 days prior to the filing of any civil action by the
11 association against the declarant or other developer of a common interest
12 development for alleged damage to the common areas, alleged damage to the
13 separate interests that the association is obligated to maintain or repair, or alleged
14 damage to the separate interests that arises out of, or is integrally related to,
15 damage to the common areas or separate interests that the association is obligated
16 to maintain or repair, the board shall provide a written notice to each member of
17 the association who appears on the records of the association when the notice is
18 provided. This notice shall specify all of the following:

19 (1) That a meeting will take place to discuss problems that may lead to the filing
20 of a civil action.

21 (2) The options, including civil actions, that are available to address the
22 problems.

23 (3) The time and place of this meeting.

24 (b) Notwithstanding subdivision (a), if the association has reason to believe that
25 the applicable statute of limitations will expire before the association files the civil
26 action, the association may give the notice, as described above, within 30 days
27 after the filing of the action.

28 **Comment.** Section 6150 continues former Section 1368.5 without change, except as indicated
29 below.

30 The following nonsubstantive change was made:

- 31 • The words “board of directors of the association” were replaced with “board.” See
32 Section 4085 (“board”).

33 See also Sections 4080 (“association”), 4095 (“common area”), 4100 (“common interest
34 development”), 4130 (“declarant”), 4160 (“member”), 4185 (“separate interest”).

35 **Uncodified (added). Operative date**

36 This act becomes operative on January 1, 2014.

DISPOSITION OF FORMER LAW

The table below shows the relationship between each provision of the existing Davis-Stirling Common Interest Development Act and the corresponding provision of the proposed law.

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
1350.....	4000	1357.130.....	4360
1350.5.....	4005	1357.140.....	4365
1350.7.....	omitted, but see 4040, 4045, 4050	1357.150.....	4370
1351 (intro.).....	4075	1358(a).....	4625
1351(a).....	4080	1358(b).....	4630
1351(b).....	4095	1358(c).....	4635
1351(c).....	4100	1358(d).....	4640
1351(d).....	4105	1358 (last ¶).....	4650
1351(e)(1)-(2).....	4285	1358 (next to last ¶).....	4645
1351(e)(3) (except last ¶).....	4285, 4290	1359.....	4610
1351(e)(last ¶).....	4295	1360.....	4760
1351(f).....	4125	1360.5.....	4715
1351(g).....	4130	1361.....	4505
1351(h).....	4135	1361.5.....	4510
1351(i).....	4145	1362.....	4500
1351(j).....	4150	1363(a).....	4800
1351(k).....	4175	1363(b).....	omitted
1351(l).....	4185	1363(c).....	4805
1351(m).....	4190	1363(d).....	5000(a)
1352.....	4200	1363(e).....	5000(b)
1352.5.....	4225(a)-(b), (d)	1363(f) (1st sent.).....	5240(b)
1353(a)(1) (1st & 2d sent.).....	4250(a)	1363(f) (2d sent.).....	omitted
1353(a)(1)-(4) (except 1st & 2d sent.).....	4255	1363(g) (1st sent.).....	5850(a)
1353(b).....	4250(b)	1363(g) (2d sent.).....	omitted
1353.5.....	4705	1363(h).....	5855
1353.6.....	4710	1363(i).....	4820
1353.7.....	4720	1363(j).....	5865
1353.8.....	4735	1363.001.....	5400
1354.....	5975	1363.005.....	omitted
1355(a).....	4270(a)	1363.03(a).....	5105(a)
1355(b) (1st sent.).....	4260	1363.03(b) (1st sent.).....	5100(a)
1355(b)(1).....	5115(e)	1363.03(b) (2d & 3d sents.).....	5115(b)
1355(b)(2).....	4270(b)	1363.03(b) (4th sent.).....	5115(c)
1355(b)(3).....	4270(a)(3)	1363.03(c).....	5110
1355.5.....	4230	1363.03(d).....	5130
1356.....	4275	1363.03(e).....	5115(a)
1357(a).....	4265(a)	1363.03(f).....	5120(a)
1357(b) (except part of 1st sent.).....	omitted	1363.03(g).....	5120(b)
1357(b) (part of 1st sent.).....	4265(b)	1363.03(h).....	5125(a)
1357(c).....	omitted	1363.03(i).....	5125(b)
1357(d).....	4265(c)	1363.03(j).....	5105(b)
1357.100(a).....	4340	1363.03(k).....	5115(d)
1357.100(b).....	4180	1363.03(l).....	5100(c)
1357.110.....	4350	1363.03(m).....	5100(d)
1357.120.....	4355	1363.03(n).....	5100(e)

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
1363.03(o).....	omitted	1365(f)(1) (2d cl. of 1st sent.)	5300(a)
1363.04.....	5135	1365(f)(2)	5810
1363.05(a)	4900	1365(f)(3)	5300(b)(9) (3d sent.)
1363.05(b) (1st part of 1st sent.)	4925(a)	1365(f)(4)	5300(b)(9) (4th sent. & 2d ¶)
1363.05(b) (2d part of 1st sent.)	4935(a)	1365.1	4040(b), 5730
1363.05(b) (2d sent.)	4935(b)	1365.2(a)(1) (except (I)(ii)-(iii))	5200(a)
1363.05(c)	4935(e)	1365.2(a)(1)(I)(ii)	5225
1363.05(d).....	4950(a)	1365.2(a)(1)(I)(iii)	5220
1363.05(e)	4950(b)	1365.2(a)(2) (except last cl.)	5200(b)
1363.05(f)	4920	1365.2(a)(2) (last cl.)	5205(g) (2d sent.)
1363.05(g).....	4923	1365.2(b)	5205(a)-(b)
1363.05(h).....	4925(b), 5000(c)	1365.2(c)(1)-(4)	5205(c)-(f)
1363.05(i).....	4930	1365.2(c)(5).....	5205(g) (1st & 3d sents.)
1363.05(j).....	4090	1365.2(d)	5215
1363.07 (except (a)(3)(F))	4600	1365.2(e)	5230
1363.07(a)(3)(F)	4202(a)(4)	1365.2(f)	5235
1363.09 (re elections).....	5145	1365.2(g)	5240(c)
1363.09(a)-(b) (re exclusive use grant).....	4605	1365.2(h)	5205(h)
1363.09(a)-(b) (re open meetings)	4955	1365.2(i)-(j)	5210(a)-(b)
1363.1(a).....	5375	1365.2(k)	5210(c)
1363.1(b) (except ¶ (1))	4155	1365.2(l)	5240(a)
1363.1(b)(1).....	5385	1365.2(m)	5240(d)
1363.2(a)-(e)	5380(a)-(e)	1365.2(n)	omitted
1363.2(f) (except 1st cl. of 2d sent.)	4155	1365.2.5	5570
1363.2(f) (1st cl. of 2d sent.)	5385	1365.2.5(b)(3)	5300(e)
1363.2(g).....	5380(f)	1365.3	5580
1363.5.....	4280	1365.5(a)	5500
1363.6.....	5405	1365.5(b)	5510(a)
1363.810	5900	1365.5(c)(1).....	5510(b)
1363.820	5905	1365.5(c)(2).....	5515
1363.830	5910	1365.5(d)	5520
1363.840	5915	1365.5(e) (1)-(4), (5) (1st sent.)	5550
1363.850	5920	1365.5(e)(5) (except 1st sent.)	5560
1364(a)	4775(a)	1365.5(f)	4177
1364(b).....	4780	1365.5(g)	4178
1364(c)	4775(b)	1365.5(h)	omitted
1364(d)-(e).....	4785	1365.6	5350(a)
1364(f).....	4790	1365.7	5800
1365 (intro. cl.).....	5300(b) (intro. cl.), 5305 (intro. cl.)	1365.9	5805
1365(a)(1)	5300(b)(1)	1366(a) (1st sent.)	5600(a)
1365(a)(2) (intro. cl.)	5300(b)(2)	1366(a) (2d sent.)	5605(a)
1365(a)(2)(A)-(D)	5565	1366(a) (3d sent.)	5605(c)
1365(a)(3)(A)	5300(b)(4)	1366(b) (1st sent.)	5605(b)
1365(a)(3)(B).....	5300(b)(5)	1366(b) (2d sent.).....	5605(c)
1365(a)(3)(C).....	5300(b)(6)	1366(b) (3d & 4th sent.)	5610 (intro.)
1365(a)(3)(D)	5300(b)(8)	1366(b)(1)-(3)	5610(a)-(c)
1365(a)(4) (1st ¶).....	5300(b)(7)	1366(c).....	5620
1365(a)(4) (2d ¶)	5300(d)	1366(d)	5615
1365(a)(4) (3d ¶)	5300(a)	1366(e).....	5650(b)
1365(b).....	5300(b)(3)	1366(f)	5650(c)
1365(c)	5305	1366.1	5600(b)
1365(d).....	5320	1366.2(a)	4210
1365(e)	5310(a)(7)	1366.2(b)	omitted
1365(f)(1) (except 2d cl. of 1st sent.)	5300(b)(9) (1st & 2d sent.)	1366.4	5625
		1367	omitted, but see 5740
		1367.1(a) (1st sent.)	5650(a)

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
1367.1(a) (2d sent.)	5660 (intro.)	1367.6	5658
1367.1(a)(1)-(6)	5660(a)-(f)	1368(a)	4525
1367.1(b)	5655	1368(b)	4530
1367.1(c)(1)(A)	5670	1368(c)(1)	4575
1367.1(c)(1)(B)	omitted, but see 5705(b)	1368(c)(2)	4580
1367.1(c)(2)	5673	1368(c)(3)	4110
1367.1(c)(3)	5665	1368(d)	4540
1367.1(d) (1st - 5th sent.)	5675	1368(e)	4545
1367.1(d) (6th sent.)	5685(a)	1368(f)	4535
1367.1(d) (7th & 8th sent.)	5725(a)	1368(g)	omitted
1367.1(e)	5725(b)	1368.1	4730
1367.1(f)	5680	1368.3	5980
1367.1(g) (1st sent.)	5735	1368.4	5985
1367.1(g) (2d sent.)	5700(a)	1368.5	6150
1367.1(g) (3d sent.)	5710(a)	1369	4615
1367.1(g) (4th sent.)	5710(c) (intro.)	1369.510	5925
1367.1(g)(1)-(2)	5710(c)(1)-(2)	1369.520	5930
1367.1(h)	5700(b)	1369.530	5935
1367.1(i)	5685(b)	1369.540	5940
1367.1(j)	5710(b)	1369.550	5945
1367.1(k)	4040(b)	1369.560	5950
1367.1(l)	5690	1369.570	5955
1367.1(m)	omitted, but see 5740	1369.580	5960
1367.1(n)	omitted	1369.590	5965
1367.4(a)	5705(a), 5715(a), 5720(a)	1370	4215
1367.4(b)	5720(b)	1371	4220
1367.4(c) (intro.)	omitted, but see 5705, 5715	1372	4020
1367.4(c)(1)	5705(b)	1373	4202
1367.4(c)(2)	5705(c)	1374	4201
1367.4(c)(3)	5705(d)	1375	6000
1367.4(c)(4)	5715(b)	1375.1	6100
1367.4(d)	5720(c)(2)-(3)	1376	4725
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BUSINESS AND PROFESSIONS CODE

Bus. & Prof. Code § 10131.01 (amended). Exceptions to application of Section 10131

SEC. _____. Section 10131.01 of the Business and Professions Code is amended to read:

10131.01. (a) Subdivision (b) of Section 10131 does not apply to (1) the manager of a hotel, motel, auto and trailer park, to the resident manager of an apartment building, apartment complex, or court, or to the employees of that manager, or (2) any person or entity, including a person employed by a real estate broker, who, on behalf of another or others, solicits or arranges, or accepts reservations or money, or both, for transient occupancies described in paragraphs (1) and (2) of subdivision (b) of Section 1940 of the Civil Code, in a dwelling unit in a common interest development, as defined in Section ~~4354~~ 4100 of the Civil Code, in a dwelling unit in an apartment building or complex, or in a single-family home, or (3) any person other than the resident manager or employees of that manager, performing the following functions who is the employee of the property management firm retained to manage a residential apartment building or complex or court and who is performing under the supervision and control of a broker of record who is an employee of that property management firm or a salesperson licensed to the broker who meets certain minimum requirements as specified in a regulation issued by the commissioner:

(A) Showing rental units and common areas to prospective tenants.

(B) Providing or accepting preprinted rental applications, or responding to inquiries from a prospective tenant concerning the completion of the application.

(C) Accepting deposits or fees for credit checks or administrative costs and accepting security deposits and rents.

(D) Providing information about rental rates and other terms and provisions of a lease or rental agreement, as set out in a schedule provided by an employer.

(E) Accepting signed leases and rental agreements from prospective tenants.

(b) A broker or salesperson shall exercise reasonable supervision and control over the activities of nonlicensed persons acting under paragraph (3) of subdivision (a).

(c) A broker employing nonlicensed persons to act under paragraph (3) of subdivision (a) shall comply with Section 10163 for each apartment building or complex or court where the nonlicensed persons are employed.

Comment. Section 10131.01 is amended to correct a cross-reference to former Civil Code Section 1351(c).

Bus. & Prof. Code § 10153.2 (amended). Course requirements for real estate broker license

SEC. _____. Section 10153.2 of the Business and Professions Code is amended to read:

1 10153.2. (a) An applicant to take the examination for an original real estate
2 broker license shall also submit evidence, satisfactory to the commissioner, of
3 successful completion, at an accredited institution, of:

4 (1) A three-semester unit course, or the quarter equivalent thereof, in each of the
5 following:

6 (A) Real estate practice.

7 (B) Legal aspects of real estate.

8 (C) Real estate appraisal.

9 (D) Real estate financing.

10 (E) Real estate economics or accounting.

11 (2) A three-semester unit course, or the quarter equivalent thereof, in three of the
12 following:

13 (A) Advanced legal aspects of real estate.

14 (B) Advanced real estate finance.

15 (C) Advanced real estate appraisal.

16 (D) Business law.

17 (E) Escrows.

18 (F) Real estate principles.

19 (G) Property management.

20 (H) Real estate office administration.

21 (I) Mortgage loan brokering and lending.

22 (J) Computer applications in real estate.

23 (K) On and after July 1, 2004, California law that relates to common interest
24 developments, including, but not limited to, topics addressed in the Davis-Stirling
25 Common Interest Development Act (~~Title 6 (commencing with Section 1350) of~~
26 ~~Part 4 of Division 2~~ Part 5 (commencing with Section 4000) of Division 4 of the
27 Civil Code).

28 (b) The commissioner shall waive the requirements of this section for an
29 applicant who is a member of the State Bar of California and shall waive the
30 requirements for which an applicant has successfully completed an equivalent
31 course of study as determined under Section 10153.5.

32 (c) The commissioner shall extend credit under this section for any course
33 completed to satisfy requirements of Section 10153.3 or 10153.4.

34 **Comment.** Section 10153.2 is amended to correct a cross-reference to former Civil Code
35 Sections 1350-1378.

36 **Bus. & Prof. Code § 10177 (amended). Suspension, revocation, or denial of real estate**
37 **license**

38 SEC. _____. Section 10177 of the Business and Professions Code is amended to
39 read:

40 10177. The commissioner may suspend or revoke the license of a real estate
41 licensee, or may deny the issuance of a license to an applicant, who has done any
42 of the following, or may suspend or revoke the license of a corporation, or deny

1 the issuance of a license to a corporation, if an officer, director, or person owning
2 or controlling 10 percent or more of the corporation's stock has done any of the
3 following:

4 (a) Procured, or attempted to procure, a real estate license or license renewal, for
5 himself or herself or a salesperson, by fraud, misrepresentation, or deceit, or by
6 making a material misstatement of fact in an application for a real estate license,
7 license renewal, or reinstatement.

8 (b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or
9 been convicted of, a felony, or a crime substantially related to the qualifications,
10 functions, or duties of a real estate licensee, and the time for appeal has elapsed or
11 the judgment of conviction has been affirmed on appeal, irrespective of an order
12 granting probation following that conviction, suspending the imposition of
13 sentence, or of a subsequent order under Section 1203.4 of the Penal Code
14 allowing that licensee to withdraw his or her plea of guilty and to enter a plea of
15 not guilty, or dismissing the accusation or information.

16 (c) Knowingly authorized, directed, connived at, or aided in the publication,
17 advertisement, distribution, or circulation of a material false statement or
18 representation concerning his or her designation or certification of special
19 education, credential, trade organization membership, or business, or concerning a
20 business opportunity or a land or subdivision, as defined in Chapter 1
21 (commencing with Section 11000) of Part 2, offered for sale.

22 (d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing
23 with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or
24 the rules and regulations of the commissioner for the administration and
25 enforcement of the Real Estate Law and Chapter 1 (commencing with Section
26 11000) of Part 2.

27 (e) Willfully used the term "realtor" or a trade name or insignia of membership
28 in a real estate organization of which the licensee is not a member.

29 (f) Acted or conducted himself or herself in a manner that would have warranted
30 the denial of his or her application for a real estate license, or has either had a
31 license denied or had a license issued by another agency of this state, another state,
32 or the federal government revoked or suspended for acts that, if done by a real
33 estate licensee, would be grounds for the suspension or revocation of a California
34 real estate license, if the action of denial, revocation, or suspension by the other
35 agency or entity was taken only after giving the licensee or applicant fair notice of
36 the charges, an opportunity for a hearing, and other due process protections
37 comparable to the Administrative Procedure Act (Chapter 3.5 (commencing with
38 Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5
39 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the
40 Government Code), and only upon an express finding of a violation of law by the
41 agency or entity.

42 (g) Demonstrated negligence or incompetence in performing an act for which he
43 or she is required to hold a license.

1 (h) As a broker licensee, failed to exercise reasonable supervision over the
2 activities of his or her salespersons, or, as the officer designated by a corporate
3 broker licensee, failed to exercise reasonable supervision and control of the
4 activities of the corporation for which a real estate license is required.

5 (i) Has used his or her employment by a governmental agency in a capacity
6 giving access to records, other than public records, in a manner that violates the
7 confidential nature of the records.

8 (j) Engaged in any other conduct, whether of the same or a different character
9 than specified in this section, which constitutes fraud or dishonest dealing.

10 (k) Violated any of the terms, conditions, restrictions, and limitations contained
11 in an order granting a restricted license.

12 (l)(1) Solicited or induced the sale, lease, or listing for sale or lease of residential
13 property on the ground, wholly or in part, of loss of value, increase in crime, or
14 decline of the quality of the schools due to the present or prospective entry into the
15 neighborhood of a person or persons having a characteristic listed in subdivision
16 (a) or (d) of Section 12955 of the Government Code, as those characteristics are
17 defined in Sections 12926 and 12926.1, subdivision (m), and paragraph (1) of
18 subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.

19 (2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1)
20 shall not be construed to apply to housing for older persons, as defined in Section
21 12955.9 of the Government Code. With respect to familial status, nothing in
22 paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11,
23 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d)
24 of Section 51 and Section ~~4360~~ 4760 of the Civil Code and subdivisions (n), (o),
25 and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

26 (m) Violated the Franchise Investment Law (Division 5 (commencing with
27 Section 31000) of Title 4 of the Corporations Code) or regulations of the
28 Commissioner of Corporations pertaining thereto.

29 (n) Violated the Corporate Securities Law of 1968 (Division 1 (commencing
30 with Section 25000) of Title 4 of the Corporations Code) or the regulations of the
31 Commissioner of Corporations pertaining thereto.

32 (o) Failed to disclose to the buyer of real property, in a transaction in which the
33 licensee is an agent for the buyer, the nature and extent of a licensee's direct or
34 indirect ownership interest in that real property. The direct or indirect ownership
35 interest in the property by a person related to the licensee by blood or marriage, by
36 an entity in which the licensee has an ownership interest, or by any other person
37 with whom the licensee has a special relationship shall be disclosed to the buyer.

38 (p) Violated Article 6 (commencing with Section 10237).

39
40 (q) Violated or failed to comply with Chapter 2 (commencing with Section
41 2920) of Title 14 of Part 4 of Division 3 of the Civil Code, related to mortgages.

42 If a real estate broker that is a corporation has not done any of the foregoing
43 acts, either directly or through its employees, agents, officers, directors, or persons

1 owning or controlling 10 percent or more of the corporation's stock, the
2 commissioner may not deny the issuance of a real estate license to, or suspend or
3 revoke the real estate license of, the corporation, provided that any offending
4 officer, director, or stockholder, who has done any of the foregoing acts
5 individually and not on behalf of the corporation, has been completely
6 disassociated from any affiliation or ownership in the corporation.

7 **Comment.** Section 10177 is amended to correct a cross-reference to former Civil Code Section
8 1360.

9 **Bus. & Prof. Code § 11003 (amended). "Planned development"**

10 SEC. _____. Section 11003 of the Business and Professions Code is amended to
11 read:

12 11003. "Planned development" has the same meaning as specified in
13 ~~subdivision (k) of Section 1351~~ Section 4175 of the Civil Code.

14 **Comment.** Section 11003 is amended to correct a cross-reference to former Civil Code Section
15 1351(k).

16 **Bus. & Prof. Code § 11003.2 (amended). "Stock cooperative"**

17 SEC. _____. Section 11003.2 of the Business and Professions Code is amended to
18 read:

19 11003.2. "Stock cooperative" has the same meaning as specified in ~~subdivision~~
20 ~~(m) of Section 1351~~ Section 4190 of the Civil Code, except that, as used in this
21 chapter, a "stock cooperative" does not include a limited-equity housing
22 cooperative.

23 **Comment.** Section 11003.2 is amended to correct a cross-reference to former Civil Code
24 Section 1351(m).

25 **Bus. & Prof. Code § 11004 (amended). "Community apartment project"**

26 SEC. _____. Section 11004 of the Business and Professions Code is amended to
27 read:

28 11004. "Community apartment project" has the same meaning as specified in
29 ~~subdivision (d) of Section 1351~~ Section 4105 of the Civil Code.

30 **Comment.** Section 11004 is amended to correct a cross-reference to former Civil Code Section
31 1351(d).

32 **Bus. & Prof. Code § 11004.5 (amended). Further definition of "subdivided lands" and**
33 **"subdivision"**

34 SEC. _____. Section 11004.5 of the Business and Professions Code is amended to
35 read:

36 11004.5. In addition to any provisions of Section 11000, the reference in this
37 code to "subdivided lands" and "subdivision" shall include all of the following:

38 (a) Any planned development, as defined in Section 11003, containing five or
39 more lots.

1 (b) Any community apartment project, as defined by Section 11004, containing
2 five or more apartments.

3 (c) Any condominium project containing five or more condominiums, as defined
4 in Section 783 of the Civil Code.

5 (d) Any stock cooperative as defined in Section 11003.2, including any legal or
6 beneficial interests therein, having or intended to have five or more shareholders.

7 (e) Any limited-equity housing cooperative, as defined in Section 11003.4.

8 (f) In addition, the following interests shall be subject to this chapter and the
9 regulations of the commissioner adopted pursuant thereto:

10 (1) Any accompanying memberships or other rights or privileges created in, or
11 in connection with, any of the forms of development referred to in subdivision (a),
12 (b), (c), (d), or (e) by any deeds, conveyances, leases, subleases, assignments,
13 declarations of restrictions, articles of incorporation, bylaws, or contracts
14 applicable thereto.

15 (2) Any interests or memberships in any owners' association as defined in
16 Section ~~1351~~ 4080 of the Civil Code, created in connection with any of the forms
17 of the development referred to in subdivision (a), (b), (c), (d), or (e).

18 (g) Notwithstanding this section, time-share plans, exchange programs,
19 incidental benefits, and short-term product subject to Chapter 2 (commencing with
20 Section 11210) are not "subdivisions" or "subdivided lands" subject to this
21 chapter.

22 **Comment.** Section 11004.5 is amended to correct a cross-reference to former Civil Code
23 Section 1351(a).

24 **Bus. & Prof. Code § 11010.10 (amended). Application for review of declaration**

25 SEC. _____. Section 11010.10 of the Business and Professions Code is amended
26 to read:

27 11010.10. A person who plans to offer for sale or lease lots or other interests in a
28 subdivision which sale or lease (a) is not subject to the provisions of this chapter,
29 (b) does not require the submission of a notice of intention as provided in Section
30 11010, or (c) is subject to this chapter and for which the local jurisdiction requires
31 review and approval of the declaration, as defined in ~~subdivision (h) of Section~~
32 ~~1351~~ Section 4135 of the Civil Code, prior to or concurrently with the recordation
33 of the subdivision map and prior to the approval of the declaration pursuant to a
34 notice of intention for a public report, may submit an application requesting
35 review of the declaration, along with any required supporting documentation, to
36 the commissioner, without the filing of a notice of intention for the subdivision for
37 which the declaration is being prepared. Upon approval, the commissioner shall
38 give notice to the applicant that the declaration shall be approved for a subsequent
39 notice of intent filing for any public report for the subdivision identified in the
40 application, provided that the subdivision setup is substantially the same as that
41 originally described in the application for review of the declaration.

1 **Comment.** Section 11010.10 is amended to correct a cross-reference to former Civil Code
2 Section 1351(h).

3 **Bus. & Prof. Code § 11018.1 (amended). Furnishing or posting of public report**

4 SEC. _____. Section 11018.1 of the Business and Professions Code is amended to
5 read:

6 11018.1. (a) A copy of the public report of the commissioner, when issued, shall
7 be given to the prospective purchaser by the owner, subdivider or agent prior to
8 the execution of a binding contract or agreement for the sale or lease of any lot or
9 parcel in a subdivision. The requirement of this section extends to lots or parcels
10 offered by the subdivider after repossession. A receipt shall be taken from the
11 prospective purchaser in a form and manner as set forth in regulations of the Real
12 Estate Commissioner.

13 (b) A copy of the public report shall be given by the owner, subdivider or agent
14 at any time, upon oral or written request, to any member of the public. A copy of
15 the public report and a statement advising that a copy of the public report may be
16 obtained from the owner, subdivider or agent at any time, upon oral or written
17 request, shall be posted in a conspicuous place at any office where sales or leases
18 or offers to sell or lease lots within the subdivision are regularly made.

19 (c) At the same time that a public report is required to be given by the owner,
20 subdivider, or agent pursuant to subdivision (a) with respect to a common interest
21 development, as defined, in ~~subdivision (c) of Section 1351~~ Section 4100 of the
22 Civil Code, the owner, subdivider, or agent shall give the prospective purchaser a
23 copy of the following statement:

24
25 “COMMON INTEREST DEVELOPMENT GENERAL INFORMATION

26 The project described in the attached Subdivision Public Report is known as a
27 common-interest development. Read the public report carefully for more
28 information about the type of development. The development includes common
29 areas and facilities which will be owned or operated by an owners' association.
30 Purchase of a lot or unit automatically entitles and obligates you as a member of
31 the association and, in most cases, includes a beneficial interest in the areas and
32 facilities. Since membership in the association is mandatory, you should be aware
33 of the following information before you purchase:

34 Your ownership in this development and your rights and remedies as a member
35 of its association will be controlled by governing instruments which generally
36 include a Declaration of Restrictions (also known as CC&R's), Articles of
37 Incorporation (or association) and bylaws. The provisions of these documents are
38 intended to be, and in most cases are, enforceable in a court of law. Study these
39 documents carefully before entering into a contract to purchase a subdivision
40 interest.

41 In order to provide funds for operation and maintenance of the common
42 facilities, the association will levy assessments against your lot or unit. If you are

1 delinquent in the payment of assessments, the association may enforce payment
2 through court proceedings or your lot or unit may be liened and sold through the
3 exercise of a power of sale. The anticipated income and expenses of the
4 association, including the amount that you may expect to pay through assessments,
5 are outlined in the proposed budget. Ask to see a copy of the budget if the
6 subdivider has not already made it available for your examination.

7 A homeowner association provides a vehicle for the ownership and use of
8 recreational and other common facilities which were designed to attract you to buy
9 in this development. The association also provides a means to accomplish
10 architectural control and to provide a base for homeowner interaction on a variety
11 of issues. The purchaser of an interest in a common-interest development should
12 contemplate active participation in the affairs of the association. He or she should
13 be willing to serve on the board of directors or on committees created by the
14 board. In short, “they” in a common interest development is “you.” Unless you
15 serve as a member of the governing board or on a committee appointed by the
16 board, your control of the operation of the common areas and facilities is limited
17 to your vote as a member of the association. There are actions that can be taken by
18 the governing body without a vote of the members of the association which can
19 have a significant impact upon the quality of life for association members.

20 Until there is a sufficient number of purchasers of lots or units in a common
21 interest development to elect a majority of the governing body, it is likely that the
22 subdivider will effectively control the affairs of the association. It is frequently
23 necessary and equitable that the subdivider do so during the early stages of
24 development. It is vitally important to the owners of individual subdivision
25 interests that the transition from subdivider to resident-owner control be
26 accomplished in an orderly manner and in a spirit of cooperation.

27 When contemplating the purchase of a dwelling in a common interest
28 development, you should consider factors beyond the attractiveness of the
29 dwelling units themselves. Study the governing instruments and give careful
30 thought to whether you will be able to exist happily in an atmosphere of
31 cooperative living where the interests of the group must be taken into account as
32 well as the interests of the individual. Remember that managing a common interest
33 development is very much like governing a small community ... the management
34 can serve you well, but you will have to work for its success.”

35
36 Failure to provide the statement in accordance with this subdivision shall not be
37 deemed a violation subject to Section 10185.

38 **Comment.** Subdivision (c) of Section 11018.1 is amended to correct a cross-reference to
39 former Civil Code Section 1351(c).

40 **Bus. & Prof. Code § 11018.12 (amended). Conditional public report for subdivision**

41 SEC. _____. Section 11018.12 of the Business and Professions Code is amended
42 to read:

1 11018.12. (a) The commissioner may issue a conditional public report for a
2 subdivision specified in Section 11004.5 if the requirements of subdivision (e) are
3 met, all deficiencies and substantive inadequacies in the documents that are
4 required to make an application for a final public report for the subdivision
5 substantially complete have been corrected, the material elements of the setup of
6 the offering to be made under the authority of the conditional public report have
7 been established, and all requirements for the issuance of a public report set forth
8 in the regulations of the commissioner have been satisfied, except for one or more
9 of the following requirements, as applicable:

10 (1) A final map has not been recorded.

11 (2) A condominium plan pursuant to ~~subdivision (e) of Section 1351~~ Section
12 4120 of the Civil Code has not been recorded.

13 (3) A declaration of covenants, conditions, and restrictions pursuant to ~~Section~~
14 ~~1353~~ Sections 4250 and 4255 of the Civil Code has not been recorded.

15 (4) A declaration of annexation has not been recorded.

16 (5) A recorded subordination of existing liens to the declaration of covenants,
17 conditions, and restrictions or declaration of annexation, or escrow instructions to
18 effect recordation prior to the first sale, are lacking.

19 (6) Filed articles of incorporation are lacking.

20 (7) A current preliminary report of a licensed title insurance company issued
21 after filing of the final map and recording of the declaration covering all
22 subdivision interests to be included in the public report has not been provided.

23 (8) Other requirements the commissioner determines are likely to be timely
24 satisfied by the applicant, notwithstanding the fact that the failure to meet these
25 requirements makes the application qualitatively incomplete.

26 (b) The commissioner may issue a conditional public report for a subdivision not
27 referred to or specified in Section 11000.1 or 11004.5 if the requirements of
28 subdivision (e) are met, all deficiencies and substantive inadequacies in the
29 documents that are required to make an application for a final public report for the
30 subdivision substantially complete have been corrected, the material elements of
31 the setup of the offering to be made under the authority of the conditional public
32 report have been established, and all requirements for issuance of a public report
33 set forth in the regulations of the commissioner have been satisfied, except for one
34 or more of the following requirements, as applicable:

35 (1) A final map has not been recorded.

36 (2) A declaration of covenants, conditions, and restrictions has not been
37 recorded.

38 (3) A current preliminary report of a licensed title insurance company issued
39 after filing of the final map and recording of the declaration covering all
40 subdivision interests to be included in the public report has not been provided.

41 (4) Other requirements the commissioner determines are likely to be timely
42 satisfied by the applicant, notwithstanding the fact that the failure to meet these
43 requirements makes the application qualitatively incomplete.

1 (c) A decision by the commissioner to not issue a conditional public report shall
2 be noticed in writing to the applicant within five business days and that notice
3 shall specifically state the reasons why the report is not being issued.

4 (d) Notwithstanding the provisions of Section 11018.2, a person may sell or
5 lease, or offer for sale or lease, lots or parcels in a subdivision pursuant to a
6 conditional public report if, as a condition of the sale or lease or offer for sale or
7 lease, delivery of legal title or other interest contracted for will not take place until
8 issuance of a public report and provided that the requirements of subdivision (e)
9 are met.

10 (e)(1) Evidence shall be supplied that all purchase money will be deposited in
11 compliance with subdivision (a) of Section 11013.2 or subdivision (a) of Section
12 11013.4, and in the case of a subdivision referred to in subdivision (a) of this
13 section, evidence shall be given of compliance with paragraphs (1) and (2) of
14 subdivision (a) of Section 11018.5.

15 (2) A description of the nature of the transaction shall be supplied.

16 (3) Provision shall be made for the return of the entire sum of money paid or
17 advanced by the purchaser if a subdivision public report has not been issued
18 during the term of the conditional public report, or as extended, or the purchaser is
19 dissatisfied with the public report because of a change pursuant to Section 11012.

20 (f) A subdivider, principal, or his or her agent shall provide a prospective
21 purchaser a copy of the conditional public report and a written statement including
22 all of the following:

23 (1) Specification of the information required for issuance of a public report.

24 (2) Specification of the information required in the public report that is not
25 available in the conditional public report, along with a statement of the reasons
26 why that information is not available at the time of issuance of the conditional
27 public report.

28 (3) A statement that no person acting as a principal or agent shall sell or lease, or
29 offer for sale or lease, lots or parcels in a subdivision for which a conditional
30 public report has been issued except as provided in this article.

31 (4) Specification of the requirements of subdivision (e).

32 (g) The prospective purchaser shall sign a receipt that he or she has received and
33 has read the conditional public report and the written statement provided pursuant
34 to subdivision (f).

35 (h) The term of a conditional public report shall not exceed six months, and may
36 be renewed for one additional term of six months if the commissioner determines
37 that the requirements for issuance of a public report are likely to be satisfied
38 during the renewal term.

39 (i) The term of a conditional public report for attached residential condominium
40 units, as defined pursuant to Section 783 of the Civil Code, consisting of 25 units
41 or more as specified on the approved tentative tract map, shall not exceed 30
42 months and may be renewed for one additional term of six months if the

1 commissioner determines that the requirements for issuance of a public report are
2 likely to be satisfied during the renewal term.

3 **Comment.** Subdivision (a) of Section 11018.12 is amended to correct cross-references to
4 former Civil Code Sections 1351(e) and 1353.

5 **Bus. & Prof. Code § 11018.6 (amended). Documents to be provided to prospective**
6 **purchaser or lessee**

7 SEC. _____. Section 11018.6 of the Business and Professions Code is amended to
8 read:

9 11018.6. Any person offering to sell or lease any interest subject to the
10 requirements of subdivision (a) of Section 11018.1 in a subdivision described in
11 Section 11004.5 shall make a copy of each of the following documents available
12 for examination by a prospective purchaser or lessee before the execution of an
13 offer to purchase or lease and shall give a copy thereof to each purchaser or lessee
14 as soon as practicable before transfer of the interest being acquired by the
15 purchaser or lessee:

16 (a) The declaration of covenants, conditions, and restrictions for the subdivision.

17 (b) Articles of incorporation or association for the subdivision owners
18 association.

19 (c) Bylaws for the subdivision owners association.

20 (d) Any other instrument which establishes or defines the common, mutual, and
21 reciprocal rights, and responsibilities of the owners or lessees of interests in the
22 subdivision as shareholders or members of the subdivision owners association or
23 otherwise.

24 (e) To the extent available, the current financial information and related
25 statements as specified in ~~subdivision (a) of Section 1365~~ Sections 5300 and 5565
26 of the Civil Code, for subdivisions subject to those provisions.

27 (f) A statement prepared by the governing body of the association setting forth
28 the outstanding delinquent assessments and related charges levied by the
29 association against the subdivision interests in question under authority of the
30 governing instruments for the subdivision and association.

31 **Comment.** Section 11018.6 is amended to correct and broaden a cross-reference to former
32 Civil Code Section 1365(a). As amended, the reference also includes the information provided
33 under former Section 1365(b) (summary of reserve funding plan).

34 **Bus. & Prof. Code § 11211.7 (amended). Application of Davis-Stirling Common Interest**
35 **Development Act to Time-Share Plan**

36 SEC. _____. Section 11211.7 of the Business and Professions Code is amended to
37 read:

38 11211.7. (a) Any time-share plan registered pursuant to this chapter to which the
39 Davis-Stirling Common Interest Development Act (~~Chapter 4 (commencing with~~
40 ~~Section 1350) of Part 4 of Division 2~~ Part 5 (commencing with Section 4000) of
41 Division 4 of the Civil Code) might otherwise apply is exempt from that act,
42 except for Sections 1354, 1355, 1355.5, 1356, 1357, 1358, 1361, 1361.5, 1362,

1 ~~1363.05, 1364, 1365.5, 1370, and 1371~~ 4090, 4177, 4178, 4215, 4220, 4230, 4260
2 to 4275, inclusive, 4500 to 4510, inclusive, 4625 to 4650, inclusive, 4775 to 4790,
3 inclusive, 4900 to 4950, inclusive, 5500 to 5560, inclusive, and 5975 of the Civil
4 Code.

5 (b)(1) To the extent that a single site time-share plan or component site of a
6 multisite time-share plan located in the state is structured as a condominium or
7 other common interest development, and there is any inconsistency between the
8 applicable provisions of this chapter and the Davis-Stirling Common Interest
9 Development Act, the applicable provisions of this chapter shall control.

10 (2) To the extent that a time-share plan is part of a mixed use project where the
11 time-share plan comprises a portion of a condominium or other common interest
12 development, the applicable provisions of this chapter shall apply to that portion
13 of the project uniquely comprising the time-share plan, and the Davis-Stirling
14 Common Interest Development Act shall apply to the project as a whole.

15 (c)(1) The offering of any time-share plan, exchange program, incidental
16 benefit, or short term product in this state that is subject to the provisions of this
17 chapter shall be exempt from Sections 1689.5 to 1689.14, inclusive, of the Civil
18 Code (Home Solicitation Sales), Sections 1689.20 to 1689.24, inclusive, of the
19 Civil Code (Seminar Sales), and Sections 1812.100 to 1812.129, inclusive, of the
20 Civil Code (Contracts for Discount Buying Services).

21 (2) A developer or exchange company that, in connection with a time-share
22 sales presentation or offer to arrange an exchange, offers a purchaser the
23 opportunity to utilize the services of an affiliate, subsidiary, or third-party entity in
24 connection with wholesale or retail air or sea transportation, shall not, in and of
25 itself, cause the developer or exchange company to be considered a seller of travel
26 subject to Sections 17550 to 17550.34, inclusive, of the Business and Professions
27 Code, so long as the entity that actually provides or arranges the air or sea
28 transportation is registered as a seller of travel with the California Attorney
29 General's office or is otherwise exempt under those sections.

30 (d) To the extent certain sections in this chapter require information and
31 disclosure that by their terms only apply to real property time-share plans, those
32 requirements shall not apply to personal property time-share plans.

33 **Comment.** Subdivision (a) of Section 11211.7 is amended to correct cross-references to former
34 provisions of the Davis-Stirling Common Interest Development Act (former Civil Code Sections
35 1350-1378).

36 **Bus. & Prof. Code § 11500 (amended) (to be repealed January 1, 2012). Definitions**

37 SEC. _____. Section 11500 of the Business and Professions Code is amended to
38 read:

39 11500. For purposes of this chapter, the following definitions apply:

40 (a) "Common interest development" means a residential development identified
41 in ~~subdivision (c) of Section 1351~~ Section 4100 of the Civil Code.

(b) “Association” has the same meaning as defined in ~~subdivision (a) of Section 1351~~ Section 4080 of the Civil Code.

(c) “Financial services” means acts performed or offered to be performed, for compensation, for an association, including, but not limited to, the preparation of internal unaudited financial statements, internal accounting and bookkeeping functions, billing of assessments, and related services.

(d) “Management services” means acts performed or offered to be performed in an advisory capacity for an association including, but not limited to, the following:

(1) Administering or supervising the collection, reporting, and archiving of the financial or common area assets of an association or common interest development, at the direction of the association’s board of directors.

(2) Implementing resolutions and directives of the board of directors of the association elected to oversee the operation of a common interest development.

(3) Implementing provisions of governing documents, as defined in ~~Section 1351~~ 4150 of the Civil Code, that govern the operation of the common interest development.

(4) Administering association contracts, including insurance contracts, within the scope of the association’s duties or with other common interest development managers, vendors, contractors, and other third-party providers of goods and services to an association or common interest development.

(e) “Professional association for common interest development managers” means an organization that meets all of the following:

(1) Has at least 200 members or certificants who are common interest development managers in California.

(2) Has been in existence for at least five years.

(3) Operates pursuant to Section 501(c) of the Internal Revenue Code.

(4) Certifies that a common interest development manager has met the criteria set forth in Section 11502 without requiring membership in the association.

(5) Requires adherence to a code of professional ethics and standards of practice for certified common interest development managers.

Comment. Section 11500 is amended to correct cross-references to subdivisions (a), (c), and (i) of former Civil Code Section 1351.

Note. Section 11500 will be repealed by operation of law on January 1, 2012, unless that date is extended by statute. See Bus. & Prof. Code § 11506. If the provision is sunsetted as scheduled, it will not need to be revised because it would be repealed before the proposed law takes effect. However, there is a possibility that the sunset date will be eliminated or extended. For that reason, Section 11500 is included in the proposed law.

Bus. & Prof. Code § 11502 (amended) (to be repealed January 1, 2012). Qualifications

SEC. _____. Section 11502 of the Business and Professions Code is amended to read:

11502. In order to be called a “certified common interest development manager,” a person shall meet one of the following requirements:

1 (a) Prior to July 1, 2003, has passed a knowledge, skills, and aptitude
2 examination as specified in Section 11502.5 or has been granted a certification or
3 a designation by a professional association for common interest development
4 managers, and who has, within five years prior to July 1, 2004, received
5 instruction in California law pursuant to paragraph (1) of subdivision (b).

6 (b) On or after July 1, 2003, has successfully completed an educational
7 curriculum that shall be no less than a combined 30 hours in coursework described
8 in this subdivision and passed an examination or examinations that test
9 competence in common interest development management in the following areas:

10 (1) The law that relates to the management of common interest developments,
11 including, but not limited to, the following courses of study:

12 (A) Topics covered by the Davis-Stirling Common Interest Development Act,
13 contained in ~~Title 6 (commencing with Section 1350) of Part 4 of Division 2~~ Part
14 5 (commencing with Section 4000) of Division 4 of the Civil Code, including, but
15 not limited to, the types of California common interest developments, disclosure
16 requirements pertaining to common interest developments, meeting requirements,
17 financial reporting requirements, and member access to association records.

18 (B) Personnel issues, including, but not limited to, general matters related to
19 independent contractor or employee status, the laws on harassment, the Unruh
20 Civil Rights Act, the California Fair Employment and Housing Act, and the
21 Americans with Disabilities Act.

22 (C) Risk management, including, but not limited to, insurance coverage,
23 maintenance, operations, and emergency preparedness.

24 (D) Property protection for associations, including, but not limited to, pertinent
25 matters relating to environmental hazards such as asbestos, radon gas, and lead-
26 based paint, the Vehicle Code, local and municipal regulations, family day care
27 facilities, energy conservation, Federal Communications Commission rules and
28 regulations, and solar energy systems.

29 (E) Business affairs of associations, including, but not limited to, necessary
30 compliance with federal, state, and local law.

31 (F) Basic understanding of governing documents, codes, and regulations relating
32 to the activities and affairs of associations and common interest developments.

33 (2) Instruction in general management that is related to the managerial and
34 business skills needed for management of a common interest development,
35 including, but not limited to, the following:

36 (A) Finance issues, including, but not limited to, budget preparation;
37 management; administration or supervision of the collection, reporting, and
38 archiving of the financial or common area assets of an association or common
39 interest development; bankruptcy laws; and assessment collection .

40 (B) Contract negotiation and administration.

41 (C) Supervision of employees and staff.

42 (D) Management of maintenance programs.

(E) Management and administration of rules, regulations, and parliamentary procedures.

(F) Management and administration of architectural standards.

(G) Management and administration of the association's recreational programs and facilities.

(H) Management and administration of owner and resident communications.

(I) Training and strategic planning for the association's board of directors and its committees.

(J) Implementation of association policies and procedures.

(K) Ethics, professional conduct, and standards of practice for common interest development managers.

(L) Current issues relating to common interest developments.

(M) Conflict avoidance and resolution mechanisms.

Comment. Section 11502 is amended to correct a cross-reference to former Civil Code Sections 1350-1378.

Note. Section 11502 will be repealed by operation of law on January 1, 2012, unless that date is extended by statute. See Bus. & Prof. Code § 11506. If the provision is sunsetted as scheduled, it will not need to be revised because it would be repealed before the proposed law takes effect. However, there is a possibility that the sunset date will be eliminated or extended. For that reason, Section 11502 is included in the proposed law.

Bus. & Prof. Code § 11504 (amended) (to be repealed January 1, 2012). Annual disclosure

SEC. _____. Section 11504 of the Business and Professions Code is amended to read:

11504. On or before September 1, 2003, and annually thereafter, a person who either provides or contemplates providing the services of a common interest development manager to an association shall disclose to the board of directors of the association the following information:

(a) Whether or not the common interest development manager has met the requirements of Section 11502 so he or she may be called a certified common interest development manager.

(b) The name, address, and telephone number of the professional association that certified the common interest development manager, the date the manager was certified, and the status of the certification.

(c) The location of his or her primary office.

(d) Prior to entering into or renewing a contract with an association, the common interest development manager shall disclose to the board of directors of the association or common interest development whether the fidelity insurance of the common interest development manager or his or her employer covers the current year's operating and reserve funds of the association. This requirement shall not be construed to compel an association to require a common interest development manager to obtain or maintain fidelity insurance.

(e) Whether the common interest development manager possesses an active real estate license.

This section may not preclude a common interest development manager from disclosing information as required in ~~Section 1363.1~~ Section 5375 of the Civil Code.

Comment. Section 11504 is amended to correct a cross-reference to the disclosure requirements of former Civil Code Section 1363.1.

Note. Section 11504 will be repealed by operation of law on January 1, 2012, unless that date is extended by statute. See Bus. & Prof. Code § 11506. If the provision is sunsetted as scheduled, it will not need to be revised because it would be repealed before the proposed law takes effect. However, there is a possibility that the sunset date will be eliminated or extended. For that reason, Section 11504 is included in the proposed law.

Bus. & Prof. Code § 11505 (amended) (to be repealed January 1, 2012). Prohibited activities

SEC. _____. Section 11505 of the Business and Professions Code is amended to read:

11505. It is an unfair business practice for a common interest development manager, a company that employs the common interest development manager, or a company that is controlled by a company that also has a financial interest in a company employing that manager, to do any of the following:

(a) On or after July 1, 2003, to hold oneself out or use the title of “certified common interest development manager” or any other term that implies or suggests that the person is certified as a common interest development manager without meeting the requirements of Section 11502.

(b) To state or advertise that he or she is certified, registered, or licensed by a governmental agency to perform the functions of a certified common interest development manager.

(c) To state or advertise a registration or license number, unless the license or registration is specified by a statute, regulation, or ordinance.

(d) To fail to comply with any item to be disclosed in Section 11504 of this code, or ~~Section 1363.1~~ Section 5375 of the Civil Code.

Comment. Section 11505 is amended to correct a cross-reference to the disclosure requirements of former Civil Code Section 1363.1.

Note. Section 11505 will be repealed by operation of law on January 1, 2012, unless that date is extended by statute. See Bus. & Prof. Code § 11506. If the provision is sunsetted as scheduled, it will not need to be revised because it would be repealed before the proposed law takes effect. However, there is a possibility that the sunset date will be eliminated or extended. For that reason, Section 11505 is included in the proposed law.

Bus. & Prof. Code § 23426.5 (amended). Tennis club

SEC. _____. Section 23426.5 of the Business and Professions Code is amended to read:

23426.5. (a) For purposes of this article, “club” also means any tennis club that maintains not less than four regulation tennis courts, together with the necessary

1 facilities and clubhouse, has members paying regular monthly dues, has been in
2 existence for not less than 45 years, and is not associated with a common interest
3 development as defined in Section ~~1351~~ 4100 of the Civil Code, a community
4 apartment project as defined in Section 11004 of this code, a project consisting of
5 condominiums as defined in Section 783 of the Civil Code, or a mobilehome park
6 as defined in Section 18214 of the Health and Safety Code.

7 (b) It shall be unlawful for any club licensed pursuant to this section to make
8 any discrimination, distinction, or restriction against any person on account of age
9 or any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the
10 Civil Code.

11 **Comment.** Section 23426.5 is amended to correct a cross-reference to former Civil Code
12 Section 1351(c).

13 **Bus. & Prof. Code § 23428.20 (amended). Further definition of “club”**

14 SEC. _____. Section 23428.20 of the Business and Professions Code is amended
15 to read:

16 23428.20. (a) For the purposes of this article, “club” also means any bona fide
17 nonprofit corporation that has been in existence for not less than nine years, has
18 more than 8,500 memberships issued and outstanding to owners of condominiums
19 and owners of memberships in stock cooperatives, and owns, leases, operates, or
20 maintains recreational facilities for its members.

21 (b) For the purposes of this article, “club” also means any bona fide nonprofit
22 corporation that was formed as a condominium homeowners’ association, has at
23 least 250 members, has served daily meals to its members and guests for a period
24 of not less than 12 years, owns or leases, operates, and maintains a clubroom or
25 rooms for its membership, has an annual fee of not less than nine hundred dollars
26 (\$900) per year per member, and has as a condition of membership that one
27 member of each household be at least 54 years old.

28 (c) Section 23399 and the numerical limitation of Section 23430 shall not apply
29 to a club defined in this section.

30 (d) No license shall be issued pursuant to this section to any club that withholds
31 membership or denies facilities or services to any person on account of any basis
32 listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those
33 bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1)
34 of subdivision (p) of Section 12955, and Section 12955.2 of the Government
35 Code.

36 (e) Notwithstanding subdivision (d), with respect to familial status, subdivision
37 (d) shall not be construed to apply to housing for older persons, as defined in
38 Section 12955.9 of the Government Code. With respect to familial status, nothing
39 in subdivision (d) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
40 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
41 Subdivision (d) of Section 51 and Section ~~1360~~ 4760 of the Civil Code and

1 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
2 apply to subdivision (d).

3 **Comment.** Section 23428.20 is amended to correct a cross-reference to former Civil Code
4 Section 1360.

CIVIL CODE

5 **Civ. Code § 51.11 (amended). Special living environments for senior citizens**

6 SEC. ____ Section 51.11 of the Civil Code is amended to read:

7 51.11. (a) The Legislature finds and declares that this section is essential to
8 establish and preserve housing for senior citizens. There are senior citizens who
9 need special living environments, and find that there is an inadequate supply of
10 this type of housing in the state.

11 (b) For the purposes of this section, the following definitions apply:

12 (1) “Qualifying resident” or “senior citizen” means a person 62 years of age or
13 older, or 55 years of age or older in a senior citizen housing development.

14 (2) “Qualified permanent resident” means a person who meets both of the
15 following requirements:

16 (A) Was residing with the qualifying resident or senior citizen prior to the death,
17 hospitalization, or other prolonged absence of, or the dissolution of marriage with,
18 the qualifying resident or senior citizen.

19 (B) Was 45 years of age or older, or was a spouse, cohabitant, or person
20 providing primary physical or economic support to the qualifying resident or
21 senior citizen.

22 (3) “Qualified permanent resident” also means a disabled person or person with
23 a disabling illness or injury who is a child or grandchild of the senior citizen or a
24 qualified permanent resident as defined in paragraph (2) who needs to live with
25 the senior citizen or qualified permanent resident because of the disabling
26 condition, illness, or injury. For purposes of this section, “disabled” means a
27 person who has a disability as defined in subdivision (b) of Section 54. A
28 “disabling injury or illness” means an illness or injury which results in a condition
29 meeting the definition of disability set forth in subdivision (b) of Section 54.

30 (A) For any person who is a qualified permanent resident under paragraph (3)
31 whose disabling condition ends, the owner, board of directors, or other governing
32 body may require the formerly disabled resident to cease residing in the
33 development upon receipt of six months’ written notice; provided, however, that
34 the owner, board of directors, or other governing body may allow the person to
35 remain a resident for up to one year, after the disabling condition ends.

36 (B) The owner, board of directors, or other governing body of the senior citizen
37 housing development may take action to prohibit or terminate occupancy by a
38 person who is a qualified permanent resident under paragraph (3) if the owner,
39 board of directors, or other governing body finds, based on credible and objective

1 evidence, that the person is likely to pose a significant threat to the health or safety
2 of others that cannot be ameliorated by means of a reasonable accommodation;
3 provided, however, that action to prohibit or terminate the occupancy may be
4 taken only after doing both of the following:

5 (i) Providing reasonable notice to and an opportunity to be heard for the disabled
6 person whose occupancy is being challenged, and reasonable notice to the
7 coresident parent or grandparent of that person.

8 (ii) Giving due consideration to the relevant, credible, and objective information
9 provided in that hearing. The evidence shall be taken and held in a confidential
10 manner, pursuant to a closed session, by the owner, board of directors, or other
11 governing body in order to preserve the privacy of the affected persons.

12 The affected persons shall be entitled to have present at the hearing an attorney
13 or any other person authorized by them to speak on their behalf or to assist them in
14 the matter.

15 (4) “Senior citizen housing development” means a residential development
16 developed with more than 20 units as a senior community by its developer and
17 zoned as a senior community by a local governmental entity, or characterized as a
18 senior community in its governing documents, as these are defined in Section
19 ~~1351~~ 4150, or qualified as a senior community under the federal Fair Housing
20 Amendments Act of 1988, as amended. Any senior citizen housing development
21 which is required to obtain a public report under Section 11010 of the Business
22 and Professions Code and which submits its application for a public report after
23 July 1, 2001, shall be required to have been issued a public report as a senior
24 citizen housing development under Section 11010.05 of the Business and
25 Professions Code.

26 (5) “Dwelling unit” or “housing” means any residential accommodation other
27 than a mobilehome.

28 (6) “Cohabitant” refers to persons who live together as husband and wife, or
29 persons who are domestic partners within the meaning of Section 297 of the
30 Family Code.

31 (7) “Permitted health care resident” means a person hired to provide live-in,
32 long-term, or terminal health care to a qualifying resident, or a family member of
33 the qualifying resident providing that care. For the purposes of this section, the
34 care provided by a permitted health care resident must be substantial in nature and
35 must provide either assistance with necessary daily activities or medical treatment,
36 or both.

37 A permitted health care resident shall be entitled to continue his or her
38 occupancy, residency, or use of the dwelling unit as a permitted resident in the
39 absence of the senior citizen from the dwelling unit only if both of the following
40 are applicable:

41 (A) The senior citizen became absent from the dwelling due to hospitalization or
42 other necessary medical treatment and expects to return to his or her residence
43 within 90 days from the date the absence began.

1 (B) The absent senior citizen or an authorized person acting for the senior
2 citizen submits a written request to the owner, board of directors, or governing
3 board stating that the senior citizen desires that the permitted health care resident
4 be allowed to remain in order to be present when the senior citizen returns to
5 reside in the development.

6 Upon written request by the senior citizen or an authorized person acting for the
7 senior citizen, the owner, board of directors, or governing board shall have the
8 discretion to allow a permitted health care resident to remain for a time period
9 longer than 90 days from the date that the senior citizen's absence began, if it
10 appears that the senior citizen will return within a period of time not to exceed an
11 additional 90 days.

12 (c) The covenants, conditions, and restrictions and other documents or written
13 policy shall set forth the limitations on occupancy, residency, or use on the basis
14 of age. Any ~~such~~ limitation shall not be more exclusive than to require that one
15 person in residence in each dwelling unit may be required to be a senior citizen
16 and that each other resident in the same dwelling unit may be required to be a
17 qualified permanent resident, a permitted health care resident, or a person under 55
18 years of age whose occupancy is permitted under subdivision (g) of this section or
19 subdivision (b) of Section 51.12. That limitation may be less exclusive, but shall at
20 least require that the persons commencing any occupancy of a dwelling unit
21 include a senior citizen who intends to reside in the unit as his or her primary
22 residence on a permanent basis. The application of the rules set forth in this
23 subdivision regarding limitations on occupancy may result in less than all of the
24 dwellings being actually occupied by a senior citizen.

25 (d) The covenants, conditions, and restrictions or other documents or written
26 policy shall permit temporary residency, as a guest of a senior citizen or qualified
27 permanent resident, by a person of less than 55 years of age for periods of time,
28 not more than 60 days in any year, that are specified in the covenants, conditions,
29 and restrictions or other documents or written policy.

30 (e) Upon the death or dissolution of marriage, or upon hospitalization, or other
31 prolonged absence of the qualifying resident, any qualified permanent resident
32 shall be entitled to continue his or her occupancy, residency, or use of the dwelling
33 unit as a permitted resident. This subdivision shall not apply to a permitted health
34 care resident.

35 (f) The covenants, conditions, and restrictions or other documents or written
36 policies applicable to any condominium, stock cooperative, limited-equity housing
37 cooperative, planned development, or multiple-family residential property that
38 contained age restrictions on January 1, 1984, shall be enforceable only to the
39 extent permitted by this section, notwithstanding lower age restrictions contained
40 in those documents or policies.

41 (g) Any person who has the right to reside in, occupy, or use the housing or an
42 unimproved lot subject to this section on or after January 1, 1985, shall not be

1 deprived of the right to continue that residency, occupancy, or use as the result of
2 the enactment of this section by Chapter 1147 of the Statutes of 1996.

3 (h) A housing development may qualify as a senior citizen housing development
4 under this section even though, as of January 1, 1997, it does not meet the
5 definition of a senior citizen housing development specified in subdivision (b), if
6 the development complies with that definition for every unit that becomes
7 occupied after January 1, 1997, and if the development was once within that
8 definition, and then became noncompliant with the definition as the result of any
9 one of the following:

10 (1) The development was ordered by a court or a local, state, or federal
11 enforcement agency to allow persons other than qualifying residents, qualified
12 permanent residents, or permitted health care residents to reside in the
13 development.

14 (2) The development received a notice of a pending or proposed action in, or by,
15 a court, or a local, state, or federal enforcement agency, which action could have
16 resulted in the development being ordered by a court or a state or federal
17 enforcement agency to allow persons other than qualifying residents, qualified
18 permanent residents, or permitted health care residents to reside in the
19 development.

20 (3) The development agreed to allow persons other than qualifying residents,
21 qualified permanent residents, or permitted health care residents to reside in the
22 development by entering into a stipulation, conciliation agreement, or settlement
23 agreement with a local, state, or federal enforcement agency or with a private
24 party who had filed, or indicated an intent to file, a complaint against the
25 development with a local, state, or federal enforcement agency, or file an action in
26 a court.

27 (4) The development allowed persons other than qualifying residents, qualified
28 permanent residents, or permitted health care residents to reside in the
29 development on the advice of counsel in order to prevent the possibility of an
30 action being filed by a private party or by a local, state, or federal enforcement
31 agency.

32 (i) The covenants, conditions, and restrictions or other documents or written
33 policy of the senior citizen housing development shall permit the occupancy of a
34 dwelling unit by a permitted health care resident during any period that the person
35 is actually providing live-in, long-term, or hospice health care to a qualifying
36 resident for compensation.

37 (j) This section shall only apply to the County of Riverside.

38 **Comment.** Subdivision (b)(4) of Section 51.11 is amended to correct a cross-reference to
39 former Section 1351(j).

40 Subdivision (c) is amended to make a stylistic revision.

41 **Civ. Code § 714 (amended). Unenforceability of restrictions on use of solar energy system**

42 SEC. _____. Section 714 of the Civil Code is amended to read:

1 714. (a) Any covenant, restriction, or condition contained in any deed, contract,
2 security instrument, or other instrument affecting the transfer or sale of, or any
3 interest in, real property, and any provision of a governing document, as defined in
4 ~~subdivision (j) of Section 1351~~ 4150, that effectively prohibits or restricts the
5 installation or use of a solar energy system is void and unenforceable.

6 (b) This section does not apply to provisions that impose reasonable restrictions
7 on solar energy systems. However, it is the policy of the state to promote and
8 encourage the use of solar energy systems and to remove obstacles thereto.
9 Accordingly, reasonable restrictions on a solar energy system are those restrictions
10 that do not significantly increase the cost of the system or significantly decrease its
11 efficiency or specified performance, or that allow for an alternative system of
12 comparable cost, efficiency, and energy conservation benefits.

13 (c)(1) A solar energy system shall meet applicable health and safety standards
14 and requirements imposed by state and local permitting authorities.

15 (2) A solar energy system for heating water shall be certified by the Solar Rating
16 Certification Corporation (SRCC) or other nationally recognized certification
17 agencies. SRCC is a nonprofit third party supported by the United States
18 Department of Energy. The certification shall be for the entire solar energy system
19 and installation.

20 (3) A solar energy system for producing electricity shall also meet all applicable
21 safety and performance standards established by the National Electrical Code, the
22 Institute of Electrical and Electronics Engineers, and accredited testing
23 laboratories such as Underwriters Laboratories and, where applicable, rules of the
24 Public Utilities Commission regarding safety and reliability.

25 (d) For the purposes of this section:

26 (1)(A) For solar domestic water heating systems or solar swimming pool heating
27 systems that comply with state and federal law, “significantly” means an amount
28 exceeding 20 percent of the cost of the system or decreasing the efficiency of the
29 solar energy system by an amount exceeding 20 percent, as originally specified
30 and proposed.

31 (B) For photovoltaic systems that comply with state and federal law,
32 “significantly” means an amount not to exceed two thousand dollars (\$2,000) over
33 the system cost as originally specified and proposed, or a decrease in system
34 efficiency of an amount exceeding 20 percent as originally specified and proposed.

35 (2) “Solar energy system” has the same meaning as defined in paragraphs (1)
36 and (2) of subdivision (a) of Section 801.5.

37 (e)(1) Whenever approval is required for the installation or use of a solar energy
38 system, the application for approval shall be processed and approved by the
39 appropriate approving entity in the same manner as an application for approval of
40 an architectural modification to the property, and shall not be willfully avoided or
41 delayed.

(2) For an approving entity that is a homeowners' association, as defined in subdivision (a) of Section ~~1351~~ 4080, and that is not a public entity, both of the following shall apply:

(A) The approval or denial of an application shall be in writing.

(B) If an application is not denied in writing within 60 days from the date of receipt of the application, the application shall be deemed approved, unless that delay is the result of a reasonable request for additional information.

(f) Any entity, other than a public entity, that willfully violates this section shall be liable to the applicant or other party for actual damages occasioned thereby, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars (\$1,000).

(g) In any action to enforce compliance with this section, the prevailing party shall be awarded reasonable attorney's fees.

(h)(1) A public entity that fails to comply with this section may not receive funds from a state-sponsored grant or loan program for solar energy. A public entity shall certify its compliance with the requirements of this section when applying for funds from a state-sponsored grant or loan program.

(2) A local public entity may not exempt residents in its jurisdiction from the requirements of this section.

Comment. Section 714 is amended to correct cross-references to former Section 1351(a), (j).

Civ. Code § 714.1 (amended). Permissible restrictions by common interest development association

SEC. _____. Section 714.1 of the Civil Code is amended to read:

714.1. Notwithstanding Section 714, any association, as defined in Section ~~1351~~ 4080, may impose reasonable provisions which:

(a) Restrict the installation of solar energy systems installed in common areas, as defined in Section ~~1351~~ 4095, to those systems approved by the association.

(b) Require the owner of a separate interest, as defined in Section ~~1351~~ 4185, to obtain the approval of the association for the installation of a solar energy system in a separate interest owned by another.

(c) Provide for the maintenance, repair, or replacement of roofs or other building components.

(d) Require installers of solar energy systems to indemnify or reimburse the association or its members for loss or damage caused by the installation, maintenance, or use of the solar energy system.

Comment. Section 714.1 is amended to correct cross-references to former Section 1351(a), (b), (l).

Civ. Code § 782 (amended). Discriminatory provision in deed of real property

SEC. _____. Section 782 of the Civil Code is amended to read:

782. (a) Any provision in any deed of real property in California, whether executed before or after the effective date of this section, that purports to restrict

1 the right of any persons to sell, lease, rent, use or occupy the property to persons
2 having any characteristic listed in subdivision (a) or (d) of Section 12955 of the
3 Government Code, as those bases are defined in Sections 12926, 12926.1,
4 subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section
5 12955.2 of the Government Code, by providing for payment of a penalty,
6 forfeiture, reverter, or otherwise, is void.

7 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
8 (a) shall not be construed to apply to housing for older persons, as defined in
9 Section 12955.9 of the Government Code. With respect to familial status, nothing
10 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
11 51.11, and 799.5, relating to housing for senior citizens. Subdivision (d) of Section
12 51 and Section ~~1360~~ 4760 of this code and subdivisions (n), (o), and (p) of Section
13 12955 of the Government Code shall apply to subdivision (a).

14 **Comment.** Section 782 is amended to correct a cross-reference to former Section 1360.

15 **Civ. Code § 782.5 (amended). Revision of instrument to omit provision that restricts rights**
16 **based on race or color**

17 SEC. _____. Section 782.5 of the Civil Code is amended to read:

18 782.5. (a) Any deed or other written instrument that relates to title to real
19 property, or any written covenant, condition, or restriction annexed or made a part
20 of, by reference or otherwise, any ~~such~~ deed or instrument that relates to title to
21 real property, ~~that~~ which contains any provision that purports to forbid, restrict, or
22 condition the right of any person or persons to sell, buy, lease, rent, use, or occupy
23 the property on account of any basis listed in subdivision (a) or (d) of Section
24 12955 of the Government Code, as those bases are defined in Sections 12926,
25 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955,
26 and Section 12955.2 of the Government Code, with respect to any person or
27 persons, shall be deemed to be revised to omit that provision.

28 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
29 (a) shall not be construed to apply to housing for older persons, as defined in
30 Section 12955.9 of the Government Code. With respect to familial status, nothing
31 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
32 51.11, and 799.5, relating to housing for senior citizens. Subdivision (d) of Section
33 51 and Section ~~1360~~ 4760 of this code and subdivisions (n), (o), and (p) of Section
34 12955 of the Government Code shall apply to subdivision (a).

35 (c) This section shall not be construed to limit or expand the powers of a court to
36 reform a deed or other written instrument.

37 **Comment.** Subdivision (a) of Section 782.5 is amended to make stylistic revisions.

38 Subdivision (b) is amended to correct a cross-reference to former Section 1360.

39 **Civ. Code § 783 (amended). “Condominium”**

40 SEC. _____. Section 783 of the Civil Code is amended to read:

1 783. A condominium is an estate in real property described in ~~subdivision (f) of~~
2 Section ~~1351~~ 4125. A condominium may, with respect to the duration of its
3 enjoyment, be either (1) an estate of inheritance or perpetual estate, (2) an estate
4 for life, (3) an estate for years, such as a leasehold or a subleasehold, or (4) any
5 combination of the foregoing.

6 **Comment.** Section 783 is amended to correct a cross-reference to former Section 1351(f).

7 **Civ. Code § 783.1 (amended). Separate and correlative interests as interests in real property**

8 SEC. _____. Section 783.1 of the Civil Code is amended to read:

9 783.1. In a stock cooperative, as defined in ~~subdivision (m) of~~ Section ~~1351~~
10 4190, both the separate interest, as defined in paragraph (4) of subdivision ~~(A)~~ (a)
11 of Section ~~1351~~ 4185, and the correlative interest in the stock cooperative
12 corporation, however designated, are interests in real property.

13 **Comment.** Section 783.1 is amended to correct cross-references to former Section 1351(~~l~~)(4),
14 (m).

15 **Civ. Code § 798.20 (amended). Discrimination prohibited**

16 SEC. _____. Section 798.20 of the Civil Code is amended to read:

17 798.20. (a) Membership in any private club or organization that is a condition
18 for tenancy in a park shall not be denied on any basis listed in subdivision (a) or
19 (d) of Section 12955 of the Government Code, as those bases are defined in
20 Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of
21 Section 12955, and Section 12955.2 of the Government Code.

22 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
23 (a) shall not be construed to apply to housing for older persons, as defined in
24 Section 12955.9 of the Government Code. With respect to familial status, nothing
25 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
26 51.11, and 799.5, relating to housing for senior citizens. Subdivision (d) of Section
27 51 and Section ~~1360~~ 4760 of this code and subdivisions (n), (*o*), and (p) of Section
28 12955 of the Government Code shall apply to subdivision (a).

29 **Comment.** Section 798.20 is amended to correct a cross-reference to former Section 1360.

30 **Civ. Code § 799.10 (amended). Political signs**

31 SEC. _____. Section 799.10 of the Civil Code is amended to read:

32 799.10. A resident may not be prohibited from displaying a political campaign
33 sign relating to a candidate for election to public office or to the initiative,
34 referendum, or recall process in the window or on the side of a manufactured
35 home or mobilehome, or within the site on which the home is located or installed.
36 The size of the face of a political sign may not exceed six square feet, and the sign
37 may not be displayed in excess of a period of time from 90 days prior to an
38 election to 15 days following the election, unless a local ordinance within the
39 jurisdiction where the manufactured home or mobilehome subject to this article is
40 located imposes a more restrictive period of time for the display of such a sign. In

1 the event of a conflict between the provisions of this section and the provisions of
2 ~~Title 6 (commencing with Section 1350) of Part 4 of Division 2~~ Part 5
3 (commencing with Section 4000) of Division 4, relating to the size and display of
4 political campaign signs, the provisions of this section shall prevail.

5 **Comment.** Section 799.10 is amended to correct a cross-reference to former Civil Code
6 Sections 1350-1378.

7 **Civ. Code § 800.25 (amended). Nondiscrimination in private club membership**

8 SEC. _____. Section 800.25 of the Civil Code is amended to read:

9 800.25. (a) Membership in any private club or organization that is a condition
10 for tenancy in a floating home marina shall not be denied on any basis listed in
11 subdivision (a) or (d) of Section 12955 of the Government Code, as those bases
12 are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of
13 subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.

14 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
15 (a) shall not be construed to apply to housing for older persons, as defined in
16 Section 12955.9 of the Government Code. With respect to familial status, nothing
17 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
18 51.11, and 799.5, relating to housing for senior citizens. Subdivision (d) of Section
19 51 and Section ~~1360~~ 4760 of this code and subdivisions (n), (o), and (p) of Section
20 12955 of the Government Code shall apply to subdivision (a).

21 **Comment.** Section 800.25 is amended to correct a cross-reference to former Section 1360.

22 **Civ. Code § 895 (amended). Definitions**

23 SEC. _____. Section 895 of the Civil Code is amended to read:

24 895. (a) “Structure” means any residential dwelling, other building, or
25 improvement located upon a lot or within a common area.

26 (b) “Designed moisture barrier” means an installed moisture barrier specified in
27 the plans and specifications, contract documents, or manufacturer’s
28 recommendations.

29 (c) “Actual moisture barrier” means any component or material, actually
30 installed, that serves to any degree as a barrier against moisture, whether or not
31 intended as ~~such a barrier against moisture~~.

32 (d) “Unintended water” means water that passes beyond, around, or through a
33 component or the material that is designed to prevent that passage.

34 (e) “Close of escrow” means the date of the close of escrow between the builder
35 and the original homeowner. With respect to claims by an association, as defined
36 in ~~subdivision (a) of Section 1351~~ 4080, “close of escrow” means the date of
37 substantial completion, as defined in Section 337.15 of the Code of Civil
38 Procedure, or the date the builder relinquishes control over the association’s ability
39 to decide whether to initiate a claim under this title, whichever is later.

40 (f) “Claimant” or “homeowner” includes the individual owners of single-family
41 homes, individual unit owners of attached dwellings and, in the case of a common

1 interest development, any association as defined in ~~subdivision (a) of Section 1351~~
2 4080.

3 **Comment.** Subdivision (c) of Section 895 is amended to make a stylistic revision.

4 Subdivisions (e) and (f) are amended to correct cross-references to former Section 1351(a).

5 **Civ. Code § 935 (amended). Similar requirements of Section 6000**

6 SEC. _____. Section 935 of the Civil Code is amended to read:

7 935. To the extent that provisions of this chapter are enforced and those
8 provisions are substantially similar to provisions in Section ~~1375 of the Civil Code~~
9 6000, but an action is subsequently commenced under Section ~~1375 of the Civil~~
10 ~~Code 6000~~, the parties are excused from performing the substantially similar
11 requirements under Section ~~1375 of the Civil Code~~ 6000.

12 **Comment.** Section 935 is amended to correct cross-references to former Section 1375.

13 **Civ. Code § 945 (amended). Binding effect on original purchaser or successor-in-interest**

14 SEC. _____. Section 945 of the Civil Code is amended to read:

15 945. The provisions, standards, rights, and obligations set forth in this title are
16 binding upon all original purchasers and their successors-in-interest. For purposes
17 of this title, associations and others having the rights set forth in Sections ~~1368.3~~
18 5980 and ~~1368.4~~ 5985 shall be considered to be original purchasers and shall have
19 standing to enforce the provisions, standards, rights, and obligations set forth in
20 this title.

21 **Comment.** Section 945 is amended to correct cross-references to former Sections 1368.3 and
22 1368.4.

23 **Civ. Code § 1098 (amended). Transfer fee defined**

24 SEC. _____. Section 1098 of the Civil Code is amended to read:

25 1098. A “transfer fee” is any fee payment requirement imposed within a
26 covenant, restriction, or condition contained in any deed, contract, security
27 instrument, or other document affecting the transfer or sale of, or any interest in,
28 real property that requires a fee be paid upon transfer of the real property. A
29 transfer fee does not include any of the following:

30 (a) Fees or taxes imposed by a governmental entity.

31 (b) Fees pursuant to mechanics’ liens.

32 (c) Fees pursuant to court-ordered transfers, payments, or judgments.

33 (d) Fees pursuant to property agreements in connection with a legal separation
34 or dissolution of marriage.

35 (e) Fees, charges, or payments in connection with the administration of estates
36 or trusts pursuant to Division 7 (commencing with Section 7000), Division 8
37 (commencing with Section 13000), or Division 9 (commencing with Section
38 15000) of the Probate Code.

1 (f) Fees, charges, or payments imposed by lenders or purchasers of loans, as
2 these entities are described in subdivision (c) of Section 10232 of the Business and
3 Professions Code.

4 (g) Assessments, charges, penalties, or fees authorized by the Davis-Stirling
5 Common Interest Development Act (~~Title 6 (commencing with Section 1350) of~~
6 ~~Part 4 of Division 2~~ Part 5 (commencing with Section 4000) of Division 4).

7 (h) Fees, charges, or payments for failing to comply with, or for transferring the
8 real property prior to satisfying, an obligation to construct residential
9 improvements on the real property.

10 (i) Any fee reflected in a document recorded against the property on or before
11 December 31, 2007, that is separate from any covenants, conditions, and
12 restrictions, and that substantially complies with subdivision (a) of Section 1098.5
13 by providing a prospective transferee notice of the following:

14 (1) Payment of a transfer fee is required.

15 (2) The amount or method of calculation of the fee.

16 (3) The date or circumstances under which the transfer fee payment requirement
17 expires, if any.

18 (4) The entity to which the fee will be paid.

19 (5) The general purposes for which the fee will be used.

20 **Comment.** Section 1098 is amended to correct a cross-reference to former Sections 1350-
21 1378.

22 **Civ. Code § 1102.6a (amended). Additional disclosures**

23 SEC. _____. Section 1102.6a of the Civil Code is amended to read:

24 1102.6a. (a) On and after July 1, 1990, any city or county may elect to require
25 disclosures on the form set forth in subdivision (b) in addition to those disclosures
26 required by Section 1102.6. However, this section does not affect or limit the
27 authority of a city or county to require disclosures on a different disclosure form in
28 connection with transactions subject to this article pursuant to an ordinance
29 adopted prior to July 1, 1990. ~~Such an~~ An ordinance like this adopted prior to July
30 1, 1990, may be amended thereafter to revise the disclosure requirements of the
31 ordinance, in the discretion of the city council or county board of supervisors.

32 (b) Disclosures required pursuant to this section pertaining to the property
33 proposed to be transferred, shall be set forth in, and shall be made on a copy of,
34 the following disclosure form:

35 (c) This section does not preclude the use of addenda to the form specified in
36 subdivision (b) to facilitate the required disclosures. This section does not preclude
37 a city or county from using the disclosure form specified in subdivision (b) for a
38 purpose other than that specified in this section.

39 (d)(1) On and after January 1, 2005, if a city or county adopts a different or
40 additional disclosure form pursuant to this section regarding the proximity or
41 effects of an airport, the statement in that form shall contain, at a minimum, the

1 information in the statement “Notice of Airport in Vicinity” found in Section
2 11010 of the Business and Professions Code, or Section 1103.4 or ~~1353~~ 4255.

3 (2) On and after January 1, 2006, if a city or county does not adopt a different or
4 additional disclosure form pursuant to this section, then the provision of an
5 “airport influence area” disclosure pursuant to Section 11010 of the Business and
6 Professions Code, or Section 1103.4 or ~~1353~~ 4255, or if there is not a current
7 airport influence map, a written disclosure of an airport within two statute miles,
8 shall be deemed to satisfy any city or county requirements for the disclosure of
9 airports in connection with transfers of real property.

10 **Comment.** Subdivision (a) of Section 1102.6a is amended to make stylistic revisions.

11 Subdivision (d) is amended to correct cross-references to the airport disclosure provisions of
12 former Section 1353.

13 **Civ. Code § 1102.6d (amended). Manufactured home and mobilehome transfer disclosure**
14 **statement**

15 SEC. _____. Section 1102.6d of the Civil Code is amended to read:

16 1102.6d. Except for manufactured homes and mobilehomes located in a
17 common interest development governed by ~~Title 6 (commencing with Section~~
18 ~~1351)~~ Part 5 (commencing with Section 4000) of Division 4, the disclosures
19 applicable to the resale of a manufactured home or mobilehome pursuant to
20 subdivision (b) of Section 1102 are set forth in, and shall be made on a copy of,
21 the following disclosure form:

22  **Note.** A form has been omitted to conserve resources.

23 **Comment.** Section 1102.6d is amended to correct a cross-reference to former Sections 1350-
24 1378.

25 **Civ. Code § 1133 (amended). Sale or lease of subdivision lot subject to blanket encumbrance**

26 SEC. _____. Section 1133 of the Civil Code is amended to read:

27 1133. (a) If a lot, parcel, or unit of a subdivision is subject to a blanket
28 encumbrance, as defined in Section 11013 of the Business and Professions Code,
29 but is exempt from a requirement of compliance with Section 11013.2 of the
30 Business and Professions Code, the subdivider, his or her agent, or representative,
31 shall not sell, or lease for a term exceeding five years, the lot, parcel, or unit, nor
32 cause it to be sold, or leased for a term exceeding five years, until the prospective
33 purchaser or lessee of the lot, parcel, or unit has been furnished with and has
34 signed a true copy of the following notice:

35 (b) “Subdivision,” as used in subdivision (a), means improved or unimproved
36 land that is divided or proposed to be divided for the purpose of sale, lease, or
37 financing, whether immediate or future, into two or more lots, parcels, or units and
38 includes a condominium project, as defined in ~~subdivision (f) of Section 1351~~
39 ~~4125~~, a community apartment project, as defined in ~~subdivision (d) of Section~~
40 ~~1351~~ 4105, a stock cooperative, as defined in ~~subdivision (m) of Section 1351~~

1 4190, and a limited equity housing cooperative, as defined in ~~subdivision (m) of~~
2 ~~Section 1351~~ 4190.

3 (c) The failure of the buyer or lessee to sign the notice shall not invalidate any
4 grant, conveyance, lease, or encumbrance.

5 (d) Any person or entity who willfully violates the provisions of this section
6 shall be liable to the purchaser of a lot or unit which is subject to the provisions of
7 this section, for actual damages, and in addition thereto, shall be guilty of a public
8 offense punishable by a fine in an amount not to exceed five hundred dollars
9 (\$500). In an action to enforce ~~such~~ the liability or fine, the prevailing party shall
10 be awarded reasonable attorney's fees.

11 **Comment.** Subdivision (b) of Section 1133 is amended to correct cross-references to former
12 Section 1351(d), (f), (m).

13 Subdivision (d) is amended to make a stylistic revision.

14 **Civ. Code § 1633.3 (amended). Transactions governed by title**

15 SEC. _____. Section 1633.3 of the Civil Code is amended to read:

16 1633.3. (a) Except as otherwise provided in subdivisions (b) and (c), this title
17 applies to electronic records and electronic signatures relating to a transaction.

18 (b) This title does not apply to transactions subject to the following laws:

19 (1) A law governing the creation and execution of wills, codicils, or
20 testamentary trusts.

21 (2) Division 1 (commencing with Section 1101) of the Uniform Commercial
22 Code, except Sections 1107 and 1206.

23 (3) Divisions 3 (commencing with Section 3101), 4 (commencing with Section
24 4101), 5 (commencing with Section 5101), 8 (commencing with Section 8101), 9
25 (commencing with Section 9101), and 11 (commencing with Section 11101) of the
26 Uniform Commercial Code.

27 (4) A law that requires that specifically identifiable text or disclosures in a
28 record or a portion of a record be separately signed, including initialed, from the
29 record. However, this paragraph does not apply to Section 1677 or 1678 of this
30 code or Section 1298 of the Code of Civil Procedure.

31 (c) This title does not apply to any specific transaction described in Section
32 17511.5 of the Business and Professions Code, Section 56.11, 56.17, 798.14,
33 1133, or 1134 of, ~~Sections 1350 to 1376, inclusive, of, Section 1689.6, 1689.7, or~~
34 ~~1689.13 of, Chapter 2.5 (commencing with Section 1695) of Title 5 of Part 2 of~~
35 ~~Division 3 of, Section 1720, 1785.15, 1789.14, 1789.16, 1789.33, or 1793.23 of,~~
36 ~~Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of,~~
37 ~~Section 1861.24, 1862.5, 1917.712, 1917.713, 1950.5, 1950.6, 1983, 2924b,~~
38 ~~2924c, 2924f, 2924i, 2924j, 2924.3, or 2937 of, Article 1.5 (commencing with~~
39 ~~Section 2945) of Chapter 2 of Title 14 of Part 4 of Division 3 of, Section 2954.5 or~~
40 ~~2963 of, Chapter 2b (commencing with Section 2981) or 2d (commencing with~~
41 ~~Section 2985.7) of Title 14 of Part 4 of Division 3 of, or Section 3071.5 of, or Part~~
42 4 (commencing with Section 4000) of Division 4 of, the Civil Code, subdivision

(b) of Section 18608 or Section 22328 of the Financial Code, Section 1358.15, 1365, 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code, Section 662, 663, 664, 667.5, 673, 677, 678, 678.1, 786, 10086, 10113.7, 10127.7, 10127.9, 10127.10, 10197, 10199.44, 10199.46, 10235.16, 10235.40, 10509.4, 10509.7, 11624.09, or 11624.1 of the Insurance Code, Section 779.1, 10010.1, or 16482 of the Public Utilities Code, or Section 9975 or 11738 of the Vehicle Code. An electronic record may not be substituted for any notice that is required to be sent pursuant to Section 1162 of the Code of Civil Procedure. Nothing in this subdivision shall be construed to prohibit the recordation of any document with a county recorder by electronic means.

(d) This title applies to an electronic record or electronic signature otherwise excluded from the application of this title under subdivision (b) when used for a transaction subject to a law other than those specified in subdivision (b).

(e) A transaction subject to this title is also subject to other applicable substantive law.

(f) The exclusion of a transaction from the application of this title under subdivision (b) or (c) shall be construed only to exclude the transaction from the application of this title, but shall not be construed to prohibit the transaction from being conducted by electronic means if the transaction may be conducted by electronic means under any other applicable law.

Comment. Section 1633.3 is amended to correct a cross-reference to former Sections 1350-1376. It also adds a reference to former Section 1378.

Civ. Code § 1864 (amended). Duties of person or entity arranging for transient occupancies on behalf of others

SEC. _____. Section 1864 of the Civil Code is amended to read:

1864. Any person or entity, including a person employed by a real estate broker, who, on behalf of another or others, solicits or arranges, or accepts reservations or money, or both, for transient occupancies described in paragraphs (1) and (2) of subdivision (b) of Section 1940, in a dwelling unit in a common interest development, as defined in Section ~~1354~~ 4100, in a dwelling unit in an apartment building or complex, or in a single-family home, shall do each of the following:

(a) Prepare and maintain, in accordance with a written agreement with the owner, complete and accurate records and books of account, kept in accordance with generally accepted accounting principles, of all reservations made and money received and spent with respect to each dwelling unit. All money received shall be kept in a trust account maintained for the benefit of owners of the dwelling units.

(b) Render, monthly, to each owner of the dwelling unit, or to that owner's designee, an accounting for each month in which there are any deposits or disbursements on behalf of that owner, however, in no event shall this accounting be rendered any less frequently than quarterly.

(c) Make all records and books of account with respect to a dwelling unit available, upon reasonable advance notice, for inspection and copying by the

1 dwelling unit's owner. The records shall be maintained for a period of at least
2 three years.

3 (d) Comply fully with all collection, payment, and recordkeeping requirements
4 of a transient occupancy tax ordinance, if any, applicable to the occupancy.

5 (e) In no event shall any activities described in this section subject the person or
6 entity performing those activities in any manner to Part 1 (commencing with
7 Section 10000) of Division 4 of the Business and Professions Code. However, a
8 real estate licensee subject to this section may satisfy the requirements of this
9 section by compliance with the Real Estate Law.

10 **Comment.** Section 1864 is amended to correct a cross-reference to former Section 1351(c).

11 **Civ. Code § 2079.3 (amended). Inspection of unit in planned development, condominium, or**
12 **stock cooperative**

13 SEC. _____. Section 2079.3 of the Civil Code is amended to read:

14 2079.3. The inspection to be performed pursuant to this article does not include
15 or involve an inspection of areas that are reasonably and normally inaccessible to
16 ~~such an~~ this type of inspection, nor an affirmative inspection of areas off the site of
17 the subject property or public records or permits concerning the title or use of the
18 property, and, if the property comprises a unit in a planned development as
19 defined in Section 11003 of the Business and Professions Code, a condominium as
20 defined in Section 783, or a stock cooperative as defined in Section 11003.2 of the
21 Business and Professions Code, does not include an inspection of more than the
22 unit offered for sale, if the seller or the broker complies with the provisions of
23 ~~Section 1368~~ Sections 4525 to 4580, inclusive.

24 **Comment.** Section 2079.3 is amended to correct a cross-reference to former Section 1368.

25 The section is also amended to make a stylistic revision.

26 **Civ. Code § 2924b (amended). Request for copy of notice of default or sale**

27 SEC. _____. Section 2924b of the Civil Code is amended to read:

28 2924b. (a) Any person desiring a copy of any notice of default and of any notice
29 of sale under any deed of trust or mortgage with power of sale upon real property
30 or an estate for years therein, as to which deed of trust or mortgage the power of
31 sale cannot be exercised until these notices are given for the time and in the
32 manner provided in Section 2924 may, at any time subsequent to recordation of
33 the deed of trust or mortgage and prior to recordation of notice of default
34 thereunder, cause to be filed for record in the office of the recorder of any county
35 in which any part or parcel of the real property is situated, a duly acknowledged
36 request for a copy of the notice of default and of sale. This request shall be signed
37 and acknowledged by the person making the request, specifying the name and
38 address of the person to whom the notice is to be mailed, shall identify the deed of
39 trust or mortgage by stating the names of the parties thereto, the date of
40 recordation thereof, and the book and page where the deed of trust or mortgage is

1 recorded or the recorder's number, and shall be in substantially the following
2 form:
3

4  **Note.** A table has been omitted to conserve resources.

5
6 Upon the filing for record of the request, the recorder shall index in the general
7 index of grantors the names of the trustors (or mortgagor) recited therein and the
8 names of persons requesting copies.

9 (b) The mortgagee, trustee, or other person authorized to record the notice of
10 default or the notice of sale shall do each of the following:

11 (1) Within 10 business days following recordation of the notice of default,
12 deposit or cause to be deposited in the United States mail an envelope, sent by
13 registered or certified mail with postage prepaid, containing a copy of the notice
14 with the recording date shown thereon, addressed to each person whose name and
15 address are set forth in a duly recorded request therefor, directed to the address
16 designated in the request and to each trustor or mortgagor at his or her last known
17 address if different than the address specified in the deed of trust or mortgage with
18 power of sale.

19 (2) At least 20 days before the date of sale, deposit or cause to be deposited in
20 the United States mail an envelope, sent by registered or certified mail with
21 postage prepaid, containing a copy of the notice of the time and place of sale,
22 addressed to each person whose name and address are set forth in a duly recorded
23 request therefor, directed to the address designated in the request and to each
24 trustor or mortgagor at his or her last known address if different than the address
25 specified in the deed of trust or mortgage with power of sale.

26 (3) As used in paragraphs (1) and (2), the "last known address" of each trustor or
27 mortgagor means the last business or residence physical address actually known
28 by the mortgagee, beneficiary, trustee, or other person authorized to record the
29 notice of default. For the purposes of this subdivision, an address is "actually
30 known" if it is contained in the original deed of trust or mortgage, or in any
31 subsequent written notification of a change of physical address from the trustor or
32 mortgagor pursuant to the deed of trust or mortgage. For the purposes of this
33 subdivision, "physical address" does not include an e-mail or any form of
34 electronic address for a trustor or mortgagor. The beneficiary shall inform the
35 trustee of the trustor's last address actually known by the beneficiary. However,
36 the trustee shall incur no liability for failing to send any notice to the last address
37 unless the trustee has actual knowledge of it.

38 (4) A "person authorized to record the notice of default or the notice of sale"
39 shall include an agent for the mortgagee or beneficiary, an agent of the named
40 trustee, any person designated in an executed substitution of trustee, or an agent of
41 that substituted trustee.

1 (c) The mortgagee, trustee, or other person authorized to record the notice of
2 default or the notice of sale shall do the following:

3 (1) Within one month following recordation of the notice of default, deposit or
4 cause to be deposited in the United States mail an envelope, sent by registered or
5 certified mail with postage prepaid, containing a copy of the notice with the
6 recording date shown thereon, addressed to each person set forth in paragraph (2),
7 provided that the estate or interest of any person entitled to receive notice under
8 this subdivision is acquired by an instrument sufficient to impart constructive
9 notice of the estate or interest in the land or portion thereof that is subject to the
10 deed of trust or mortgage being foreclosed, and provided the instrument is
11 recorded in the office of the county recorder so as to impart that constructive
12 notice prior to the recording date of the notice of default and provided the
13 instrument as so recorded sets forth a mailing address that the county recorder
14 shall use, as instructed within the instrument, for the return of the instrument after
15 recording, and which address shall be the address used for the purposes of mailing
16 notices herein.

17 (2) The persons to whom notice shall be mailed under this subdivision are:

18 (A) The successor in interest, as of the recording date of the notice of default, of
19 the estate or interest or any portion thereof of the trustor or mortgagor of the deed
20 of trust or mortgage being foreclosed.

21 (B) The beneficiary or mortgagee of any deed of trust or mortgage recorded
22 subsequent to the deed of trust or mortgage being foreclosed, or recorded prior to
23 or concurrently with the deed of trust or mortgage being foreclosed but subject to a
24 recorded agreement or a recorded statement of subordination to the deed of trust or
25 mortgage being foreclosed.

26 (C) The assignee of any interest of the beneficiary or mortgagee described in
27 subparagraph (B), as of the recording date of the notice of default.

28 (D) The vendee of any contract of sale, or the lessee of any lease, of the estate or
29 interest being foreclosed that is recorded subsequent to the deed of trust or
30 mortgage being foreclosed, or recorded prior to or concurrently with the deed of
31 trust or mortgage being foreclosed but subject to a recorded agreement or
32 statement of subordination to the deed of trust or mortgage being foreclosed.

33 (E) The successor in interest to the vendee or lessee described in subparagraph
34 (D), as of the recording date of the notice of default.

35 (F) The office of the Controller, Sacramento, California, where, as of the
36 recording date of the notice of default, a "Notice of Lien for Postponed Property
37 Taxes" has been recorded against the real property to which the notice of default
38 applies.

39 (3) At least 20 days before the date of sale, deposit or cause to be deposited in
40 the United States mail an envelope, sent by registered or certified mail with
41 postage prepaid, containing a copy of the notice of the time and place of sale
42 addressed to each person to whom a copy of the notice of default is to be mailed as
43 provided in paragraphs (1) and (2), and addressed to the office of any state taxing

1 agency, Sacramento, California, that has recorded, subsequent to the deed of trust
2 or mortgage being foreclosed, a notice of tax lien prior to the recording date of the
3 notice of default against the real property to which the notice of default applies.

4 (4) Provide a copy of the notice of sale to the Internal Revenue Service, in
5 accordance with Section 7425 of the Internal Revenue Code and any applicable
6 federal regulation, if a “Notice of Federal Tax Lien under Internal Revenue Laws”
7 has been recorded, subsequent to the deed of trust or mortgage being foreclosed,
8 against the real property to which the notice of sale applies. The failure to provide
9 the Internal Revenue Service with a copy of the notice of sale pursuant to this
10 paragraph shall be sufficient cause to rescind the trustee’s sale and invalidate the
11 trustee’s deed, at the option of either the successful bidder at the trustee’s sale or
12 the trustee, and in either case with the consent of the beneficiary. Any option to
13 rescind the trustee’s sale pursuant to this paragraph shall be exercised prior to any
14 transfer of the property by the successful bidder to a bona fide purchaser for value.
15 A recision of the trustee’s sale pursuant to this paragraph may be recorded in a
16 notice of recision pursuant to Section 1058.5.

17 (5) The mailing of notices in the manner set forth in paragraph (1) shall not
18 impose upon any licensed attorney, agent, or employee of any person entitled to
19 receive notices as herein set forth any duty to communicate the notice to the
20 entitled person from the fact that the mailing address used by the county recorder
21 is the address of the attorney, agent, or employee.

22 (d) Any deed of trust or mortgage with power of sale hereafter executed upon
23 real property or an estate for years therein may contain a request that a copy of any
24 notice of default and a copy of any notice of sale thereunder shall be mailed to any
25 person or party thereto at the address of the person given therein, and a copy of
26 any notice of default and of any notice of sale shall be mailed to each of these at
27 the same time and in the same manner required as though a separate request
28 therefor had been filed by each of these persons as herein authorized. If any deed
29 of trust or mortgage with power of sale executed after September 19, 1939, except
30 a deed of trust or mortgage of any of the classes excepted from the provisions of
31 Section 2924, does not contain a mailing address of the trustor or mortgagor
32 therein named, and if no request for special notice by the trustor or mortgagor in
33 substantially the form set forth in this section has subsequently been recorded, a
34 copy of the notice of default shall be published once a week for at least four weeks
35 in a newspaper of general circulation in the county in which the property is
36 situated, the publication to commence within 10 business days after the filing of
37 the notice of default. In lieu of publication, a copy of the notice of default may be
38 delivered personally to the trustor or mortgagor within the 10 business days or at
39 any time before publication is completed, or by posting the notice of default in a
40 conspicuous place on the property and mailing the notice to the last known address
41 of the trustor or mortgagor.

42 (e) Any person required to mail a copy of a notice of default or notice of sale to
43 each trustor or mortgagor pursuant to subdivision (b) or (c) by registered or

1 certified mail shall simultaneously cause to be deposited in the United States mail,
2 with postage prepaid and mailed by first-class mail, an envelope containing an
3 additional copy of the required notice addressed to each trustor or mortgagor at the
4 same address to which the notice is sent by registered or certified mail pursuant to
5 subdivision (b) or (c). The person shall execute and retain an affidavit identifying
6 the notice mailed, showing the name and residence or business address of that
7 person, that he or she is over the age of 18 years, the date of deposit in the mail,
8 the name and address of the trustor or mortgagor to whom sent, and that the
9 envelope was sealed and deposited in the mail with postage fully prepaid. In the
10 absence of fraud, the affidavit required by this subdivision shall establish a
11 conclusive presumption of mailing.

12 (f)(1) Notwithstanding subdivision (a), with respect to separate interests
13 governed by an association, as defined in ~~subdivision (a) of Section 1351~~ 4080,
14 the association may cause to be filed in the office of the recorder in the county in
15 which the separate interests are situated a request that a mortgagee, trustee, or
16 other person authorized to record a notice of default regarding any of those
17 separate interests mail to the association a copy of any trustee's deed upon sale
18 concerning a separate interest. The request shall include a legal description or the
19 assessor's parcel number of all the separate interests. A request recorded pursuant
20 to this subdivision shall include the name and address of the association and a
21 statement that it is a homeowners' association. Subsequent requests of an
22 association shall supersede prior requests. A request pursuant to this subdivision
23 shall be recorded before the filing of a notice of default. The mortgagee, trustee, or
24 other authorized person shall mail the requested information to the association
25 within 15 business days following the date the trustee's deed is recorded. Failure
26 to mail the request, pursuant to this subdivision, shall not affect the title to real
27 property.

28 (2) A request filed pursuant to paragraph (1) does not, for purposes of Section
29 27288.1 of the Government Code, constitute a document that either effects or
30 evidences a transfer or encumbrance of an interest in real property or that releases
31 or terminates any interest, right, or encumbrance of an interest in real property.

32 (g) No request for a copy of any notice filed for record pursuant to this section,
33 no statement or allegation in the request, and no record thereof shall affect the title
34 to real property or be deemed notice to any person that any person requesting
35 copies of notice has or claims any right, title, or interest in, or lien or charge upon
36 the property described in the deed of trust or mortgage referred to therein.

37 (h) "Business day," as used in this section, has the meaning specified in Section
38 9.

39 **Comment.** Subdivision (f) of Section 2924b is amended to correct a cross-reference to former
40 Section 1351(a).

41 **Civ. Code § 2929.5 (amended). Secured lender's right of entry and inspection**

42 SEC. _____. Section 2929.5 of the Civil Code is amended to read:

1 2929.5. (a) A secured lender may enter and inspect the real property security for
2 the purpose of determining the existence, location, nature, and magnitude of any
3 past or present release or threatened release of any hazardous substance into, onto,
4 beneath, or from the real property security on either of the following:

5 (1) Upon reasonable belief of the existence of a past or present release or
6 threatened release of any hazardous substance into, onto, beneath, or from the real
7 property security not previously disclosed in writing to the secured lender in
8 conjunction with the making, renewal, or modification of a loan, extension of
9 credit, guaranty, or other obligation involving the borrower.

10 (2) After the commencement of nonjudicial or judicial foreclosure proceedings
11 against the real property security.

12 (b) The secured lender shall not abuse the right of entry and inspection or use it
13 to harass the borrower or tenant of the property. Except in case of an emergency,
14 when the borrower or tenant of the property has abandoned the premises, or if it is
15 impracticable to do so, the secured lender shall give the borrower or tenant of the
16 property reasonable notice of the secured lender's intent to enter, and enter only
17 during the borrower's or tenant's normal business hours. Twenty-four hours'
18 notice shall be presumed to be reasonable notice in the absence of evidence to the
19 contrary.

20 (c) The secured lender shall reimburse the borrower for the cost of repair of any
21 physical injury to the real property security caused by the entry and inspection.

22 (d) If a secured lender is refused the right of entry and inspection by the
23 borrower or tenant of the property, or is otherwise unable to enter and inspect the
24 property without a breach of the peace, the secured lender may, upon petition,
25 obtain an order from a court of competent jurisdiction to exercise the secured
26 lender's rights under subdivision (a), and that action shall not constitute an action
27 within the meaning of subdivision (a) of Section 726 of the Code of Civil
28 Procedure.

29 (e) For purposes of this section:

30 (1) "Borrower" means the trustor under a deed of trust, or a mortgagor under a
31 mortgage, where the deed of trust or mortgage encumbers real property security
32 and secures the performance of the trustor or mortgagor under a loan, extension of
33 credit, guaranty, or other obligation. The term includes any successor-in-interest of
34 the trustor or mortgagor to the real property security before the deed of trust or
35 mortgage has been discharged, reconveyed, or foreclosed upon.

36 (2) "Hazardous substance" includes all of the following:

37 (A) Any "hazardous substance" as defined in subdivision (h) of Section 25281
38 of the Health and Safety Code.

39 (B) Any "waste" as defined in subdivision (d) of Section 13050 of the Water
40 Code.

41 (C) Petroleum, including crude oil or any fraction thereof, natural gas, natural
42 gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture
43 thereof.

(3) “Real property security” means any real property and improvements, other than a separate interest and any related interest in the common area of a residential common interest development, as the terms “separate interest,” “common area,” and “common interest development” are defined in ~~Section 1351~~ Sections 4095, 4100, and 4185, or real property consisting of one acre or less which contains 1 to 15 dwelling units.

(4) “Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including continuing migration, of hazardous substances into, onto, or through soil, surface water, or groundwater.

(5) “Secured lender” means the beneficiary under a deed of trust against the real property security, or the mortgagee under a mortgage against the real property security, and any successor-in-interest of the beneficiary or mortgagee to the deed of trust or mortgage.

Comment. Section 2929.5 is amended to correct cross-references to former Section 1351(a), (b), and (l).

Civ. Code § 2955.1 (amended). Disclosures regarding earthquake insurance requirements

SEC. _____. Section 2955.1 of the Civil Code is amended to read:

2955.1. (a) Any lender originating a loan secured by the borrower’s separate interest in a condominium project, as defined in ~~subdivision (f) of Section 1351~~ 4125, which requires earthquake insurance or imposes a fee or any other condition in lieu thereof pursuant to an underwriting requirement imposed by an institutional third-party purchaser shall disclose all of the following to the potential borrower:

(1) That the lender or the institutional third party in question requires earthquake insurance or imposes a fee or any other condition in lieu thereof pursuant to an underwriting requirement imposed by an institutional third party purchaser.

(2) That not all lenders or institutional third parties require earthquake insurance or impose a fee or any other condition in lieu thereof pursuant to an underwriting requirement imposed by an institutional third party purchaser.

(3) Earthquake insurance may be required on the entire condominium project.

(4) That lenders or institutional third parties may also require that a condominium project maintain, or demonstrate an ability to maintain, financial reserves in the amount of the earthquake insurance deductible.

(b) For the purposes of this section, “institutional third party” means the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, and other substantially similar institutions, whether public or private.

(c) The disclosure required by this section shall be made in writing by the lender as soon as reasonably practicable.

Comment. Section 2955.1 is amended to correct a cross-reference to former Section 1351(f).

CODE OF CIVIL PROCEDURE

1 **Code Civ. Proc. § 86 (amended). Specific cases and proceedings that are limited civil cases**

2 SEC. ____ . Section 86 of the Code of Civil Procedure is amended to read:

3 86. (a) The following civil cases and proceedings are limited civil cases:

4 (1) A case at law in which the demand, exclusive of interest, or the value of the
5 property in controversy amounts to twenty-five thousand dollars (\$25,000) or less.
6 This paragraph does not apply to a case that involves the legality of any tax,
7 impost, assessment, toll, or municipal fine, except an action to enforce payment of
8 delinquent unsecured personal property taxes if the legality of the tax is not
9 contested by the defendant.

10 (2) An action for dissolution of partnership where the total assets of the
11 partnership do not exceed twenty-five thousand dollars (\$25,000); an action of
12 interpleader where the amount of money or the value of the property involved
13 does not exceed twenty-five thousand dollars (\$25,000).

14 (3) An action to cancel or rescind a contract when the relief is sought in
15 connection with an action to recover money not exceeding twenty-five thousand
16 dollars (\$25,000) or property of a value not exceeding twenty-five thousand
17 dollars (\$25,000), paid or delivered under, or in consideration of, the contract; an
18 action to revise a contract where the relief is sought in an action upon the contract
19 if the action otherwise is a limited civil case.

20 (4) A proceeding in forcible entry or forcible or unlawful detainer where the
21 whole amount of damages claimed is twenty-five thousand dollars (\$25,000) or
22 less.

23 (5) An action to enforce and foreclose a lien on personal property where the
24 amount of the lien is twenty-five thousand dollars (\$25,000) or less.

25 (6) An action to enforce and foreclose, or a petition to release, a lien arising
26 under the provisions of Chapter 4 (commencing with Section 8400) of Title 2 of
27 Part 6 of Division 4 of the Civil Code, or to enforce and foreclose an assessment
28 lien on a common interest development as defined in Section ~~1354~~ 4100 of the
29 Civil Code, where the amount of the liens is twenty-five thousand dollars
30 (\$25,000) or less. However, if an action to enforce the lien affects property that is
31 also affected by a similar pending action that is not a limited civil case, or if the
32 total amount of liens sought to be foreclosed against the same property aggregates
33 an amount in excess of twenty-five thousand dollars (\$25,000), the action is not a
34 limited civil case.

35 (7) An action for declaratory relief when brought pursuant to either of the
36 following:

37 (A) By way of cross-complaint as to a right of indemnity with respect to the
38 relief demanded in the complaint or a cross-complaint in an action or proceeding
39 that is otherwise a limited civil case.

1 (B) To conduct a trial after a nonbinding fee arbitration between an attorney and
2 client, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of
3 Division 3 of the Business and Professions Code, where the amount in controversy
4 is twenty-five thousand dollars (\$25,000) or less.

5 (8) An action to issue a temporary restraining order or preliminary injunction; to
6 take an account, where necessary to preserve the property or rights of any party to
7 a limited civil case; to make any order or perform any act, pursuant to Title 9
8 (commencing with Section 680.010) of Part 2 (enforcement of judgments) in a
9 limited civil case; to appoint a receiver pursuant to Section 564 in a limited civil
10 case; to determine title to personal property seized in a limited civil case.

11 (9) An action under Article 3 (commencing with Section 708.210) of Chapter 6
12 of Division 2 of Title 9 of Part 2 for the recovery of an interest in personal
13 property or to enforce the liability of the debtor of a judgment debtor where the
14 interest claimed adversely is of a value not exceeding twenty-five thousand dollars
15 (\$25,000) or the debt denied does not exceed twenty-five thousand dollars
16 (\$25,000).

17 (10) An arbitration-related petition filed pursuant to either of the following:

18 (A) Article 2 (commencing with Section 1292) of Chapter 5 of Title 9 of Part 3,
19 except for uninsured motorist arbitration proceedings in accordance with Section
20 11580.2 of the Insurance Code, if the petition is filed before the arbitration award
21 becomes final and the matter to be resolved by arbitration is a limited civil case
22 under paragraphs (1) to (9), inclusive, of subdivision (a) or if the petition is filed
23 after the arbitration award becomes final and the amount of the award and all other
24 rulings, pronouncements, and decisions made in the award are within paragraphs
25 (1) to (9), inclusive, of subdivision (a).

26 (B) To confirm, correct, or vacate a fee arbitration award between an attorney
27 and client that is binding or has become binding, pursuant to Article 13
28 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and
29 Professions Code, where the arbitration award is twenty-five thousand dollars
30 (\$25,000) or less.

31 (b) The following cases in equity are limited civil cases:

32 (1) A case to try title to personal property when the amount involved is not more
33 than twenty-five thousand dollars (\$25,000).

34 (2) A case when equity is pleaded as a defensive matter in any case that is
35 otherwise a limited civil case.

36 (3) A case to vacate a judgment or order of the court obtained in a limited civil
37 case through extrinsic fraud, mistake, inadvertence, or excusable neglect.

38 **Comment.** Section 86 is amended to correct a cross-reference to former Civil Code Section
39 1351(c).

40 **Code Civ. Proc. § 116.540 (amended). Participation by individuals other than plaintiff and**
41 **defendant**

42 SEC. _____. Section 116.540 of the Code of Civil Procedure is amended to read:

1 116.540. (a) Except as permitted by this section, no individual other than the
2 plaintiff and the defendant may take part in the conduct or defense of a small
3 claims action.

4 (b) Except as additionally provided in subdivision (i), a corporation may appear
5 and participate in a small claims action only through a regular employee, or a duly
6 appointed or elected officer or director, who is employed, appointed, or elected for
7 purposes other than solely representing the corporation in small claims court.

8 (c) A party who is not a corporation or a natural person may appear and
9 participate in a small claims action only through a regular employee, or a duly
10 appointed or elected officer or director, or in the case of a partnership, a partner,
11 engaged for purposes other than solely representing the party in small claims
12 court.

13 (d) If a party is an individual doing business as a sole proprietorship, the party
14 may appear and participate in a small claims action by a representative and
15 without personally appearing if both of the following conditions are met:

16 (1) The claim can be proved or disputed by evidence of an account that
17 constitutes a business record as defined in Section 1271 of the Evidence Code, and
18 there is no other issue of fact in the case.

19 (2) The representative is a regular employee of the party for purposes other than
20 solely representing the party in small claims actions and is qualified to testify to
21 the identity and mode of preparation of the business record.

22 (e) A plaintiff is not required to personally appear, and may submit declarations
23 to serve as evidence supporting his or her claim or allow another individual to
24 appear and participate on his or her behalf, if (1) the plaintiff is serving on active
25 duty in the United States Armed Forces outside this state, (2) the plaintiff was
26 assigned to his or her duty station after his or her claim arose, (3) the assignment is
27 for more than six months, (4) the representative is serving without compensation,
28 and (5) the representative has appeared in small claims actions on behalf of others
29 no more than four times during the calendar year. The defendant may file a claim
30 in the same action in an amount not to exceed the jurisdictional limits stated in
31 Sections 116.220, 116.221, and 116.231.

32 (f) A party incarcerated in a county jail, a Department of Corrections and
33 Rehabilitation facility, or a Division of Juvenile Facilities facility is not required to
34 personally appear, and may submit declarations to serve as evidence supporting
35 his or her claim, or may authorize another individual to appear and participate on
36 his or her behalf if that individual is serving without compensation and has
37 appeared in small claims actions on behalf of others no more than four times
38 during the calendar year.

39 (g) A defendant who is a nonresident owner of real property may defend against
40 a claim relating to that property without personally appearing by (1) submitting
41 written declarations to serve as evidence supporting his or her defense, (2)
42 allowing another individual to appear and participate on his or her behalf if that
43 individual is serving without compensation and has appeared in small claims

1 actions on behalf of others no more than four times during the calendar year, or (3)
2 taking the action described in both (1) and (2).

3 (h) A party who is an owner of rental real property may appear and participate in
4 a small claims action through a property agent under contract with the owner to
5 manage the rental of that property, if (1) the owner has retained the property agent
6 principally to manage the rental of that property and not principally to represent
7 the owner in small claims court, and (2) the claim relates to the rental property.

8 (i) A party that is an association created to manage a common interest
9 development, as defined in Section ~~1351~~ 4100 of the Civil Code, may appear and
10 participate in a small claims action through an agent, a management company
11 representative, or bookkeeper who appears on behalf of that association.

12 (j) At the hearing of a small claims action, the court shall require any individual
13 who is appearing as a representative of a party under subdivisions (b) to (i),
14 inclusive, to file a declaration stating (1) that the individual is authorized to appear
15 for the party, and (2) the basis for that authorization. If the representative is
16 appearing under subdivision (b), (c), (d), (h), or (i), the declaration also shall state
17 that the individual is not employed solely to represent the party in small claims
18 court. If the representative is appearing under subdivision (e), (f), or (g), the
19 declaration also shall state that the representative is serving without compensation,
20 and has appeared in small claims actions on behalf of others no more than four
21 times during the calendar year.

22 (k) A husband or wife who sues or who is sued with his or her spouse may
23 appear and participate on behalf of his or her spouse if (1) the claim is a joint
24 claim, (2) the represented spouse has given his or her consent, and (3) the court
25 determines that the interests of justice would be served.

26 (l) If the court determines that a party cannot properly present his or her claim or
27 defense and needs assistance, the court may in its discretion allow another
28 individual to assist that party.

29 (m) Nothing in this section shall operate or be construed to authorize an attorney
30 to participate in a small claims action except as expressly provided in Section
31 116.530.

32 **Comment.** Subdivision (i) of Section 116.540 is amended to correct a cross-reference to
33 former Civil Code Section 1351(c).

34 **Code Civ. Proc. § 564 (amended). Cases in which appointment of receiver is authorized**

35 SEC. ____ . Section 564 of the Code of Civil Procedure is amended to read:

36 564. (a) A receiver may be appointed, in the manner provided in this chapter, by
37 the court in which an action or proceeding is pending in any case in which the
38 court is empowered by law to appoint a receiver.

39 (b) A receiver may be appointed by the court in which an action or proceeding is
40 pending, or by a judge thereof, in the following cases:

41 (1) In an action by a vendor to vacate a fraudulent purchase of property, or by a
42 creditor to subject any property or fund to the creditor's claim, or between partners

1 or others jointly owning or interested in any property or fund, on the application of
2 the plaintiff, or of any party whose right to or interest in the property or fund, or
3 the proceeds thereof, is probable, and where it is shown that the property or fund is
4 in danger of being lost, removed, or materially injured.

5 (2) In an action by a secured lender for the foreclosure of a deed of trust or
6 mortgage and sale of property upon which there is a lien under a deed of trust or
7 mortgage, where it appears that the property is in danger of being lost, removed, or
8 materially injured, or that the condition of the deed of trust or mortgage has not
9 been performed, and that the property is probably insufficient to discharge the
10 deed of trust or mortgage debt.

11 (3) After judgment, to carry the judgment into effect.

12 (4) After judgment, to dispose of the property according to the judgment, or to
13 preserve it during the pendency of an appeal, or pursuant to the Enforcement of
14 Judgments Law Title 9 (commencing with Section 680.010), or after sale of real
15 property pursuant to a decree of foreclosure, during the redemption period, to
16 collect, expend, and disburse rents as directed by the court or otherwise provided
17 by law.

18 (5) Where a corporation has been dissolved, as provided in Section 565.

19 (6) Where a corporation is insolvent, or in imminent danger of insolvency, or
20 has forfeited its corporate rights.

21 (7) In an action of unlawful detainer.

22 (8) At the request of the Public Utilities Commission pursuant to Section 855 or
23 5259.5 of the Public Utilities Code.

24 (9) In all other cases where necessary to preserve the property or rights of any
25 party.

26 (10) At the request of the Office of Statewide Health Planning and
27 Development, or the Attorney General, pursuant to Section 129173 of the Health
28 and Safety Code.

29 (11) In an action by a secured lender for specific performance of an assignment
30 of rents provision in a deed of trust, mortgage, or separate assignment document.
31 The appointment may be continued after entry of a judgment for specific
32 performance if appropriate to protect, operate, or maintain real property
33 encumbered by a deed of trust or mortgage or to collect rents therefrom while a
34 pending nonjudicial foreclosure under power of sale in a deed of trust or mortgage
35 is being completed.

36 (12) In a case brought by an assignee under an assignment of leases, rents,
37 issues, or profits pursuant to subdivision (g) of Section 2938 of the Civil Code.

38 (c) A receiver may be appointed, in the manner provided in this chapter,
39 including, but not limited to, Section 566, by the superior court in an action
40 brought by a secured lender to enforce the rights provided in Section 2929.5 of the
41 Civil Code, to enable the secured lender to enter and inspect the real property
42 security for the purpose of determining the existence, location, nature, and
43 magnitude of any past or present release or threatened release of any hazardous

1 substance into, onto, beneath, or from the real property security. The secured
2 lender shall not abuse the right of entry and inspection or use it to harass the
3 borrower or tenant of the property. Except in case of an emergency, when the
4 borrower or tenant of the property has abandoned the premises, or if it is
5 impracticable to do so, the secured lender shall give the borrower or tenant of the
6 property reasonable notice of the secured lender's intent to enter and shall enter
7 only during the borrower's or tenant's normal business hours. Twenty-four hours'
8 notice shall be presumed to be reasonable notice in the absence of evidence to the
9 contrary.

10 (d) Any action by a secured lender to appoint a receiver pursuant to this section
11 shall not constitute an action within the meaning of subdivision (a) of Section 726.

12 (e) For purposes of this section:

13 (1) "Borrower" means the trustor under a deed of trust, or a mortgagor under a
14 mortgage, where the deed of trust or mortgage encumbers real property security
15 and secures the performance of the trustor or mortgagor under a loan, extension of
16 credit, guaranty, or other obligation. The term includes any successor in interest of
17 the trustor or mortgagor to the real property security before the deed of trust or
18 mortgage has been discharged, reconveyed, or foreclosed upon.

19 (2) "Hazardous substance" means any of the following:

20 (A) Any "hazardous substance" as defined in subdivision (h) of Section 25281
21 of the Health and Safety Code.

22 (B) Any "waste" as defined in subdivision (d) of Section 13050 of the Water
23 Code.

24 (C) Petroleum including crude oil or any fraction thereof, natural gas, natural
25 gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture
26 thereof.

27 (3) "Real property security" means any real property and improvements, other
28 than a separate interest and any related interest in the common area of a residential
29 common interest development, as the terms "separate interest," "common area,"
30 and "common interest development" are defined in ~~Section 1351~~ Sections 4095,
31 4100, and 4185 of the Civil Code, or real property consisting of one acre or less
32 that contains 1 to 15 dwelling units.

33 (4) "Release" means any spilling, leaking, pumping, pouring, emitting,
34 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into
35 the environment, including continuing migration, of hazardous substances into,
36 onto, or through soil, surface water, or groundwater.

37 (5) "Secured lender" means the beneficiary under a deed of trust against the real
38 property security, or the mortgagee under a mortgage against the real property
39 security, and any successor in interest of the beneficiary or mortgagee to the deed
40 of trust or mortgage.

41 **Comment.** Section 564 is amended to correct cross-references to former Civil Code Section
42 1351(b), (c), (l).

1 **Code Civ. Proc. § 726.5 (amended). Election between waiver of lien and exercise of specified**
2 **rights and remedies**

3 SEC. _____. Section 726.5 of the Code of Civil Procedure is amended to read:

4 726.5. (a) Notwithstanding subdivision (a) of Section 726 or any other provision
5 of law, except subdivision (d) of this section, a secured lender may elect between
6 the following where the real property security is environmentally impaired and the
7 borrower's obligations to the secured lender are in default:

8 (1)(A) Waiver of its lien against (i) any parcel of real property security that is
9 environmentally impaired or is an affected parcel, and (ii) all or any portion of the
10 fixtures and personal property attached to the parcels; and

11 (B) Exercise of (i) the rights and remedies of an unsecured creditor, including
12 reduction of its claim against the borrower to judgment, and (ii) any other rights
13 and remedies permitted by law.

14 (2) Exercise of (i) the rights and remedies of a creditor secured by a deed of trust
15 or mortgage and, if applicable, a lien against fixtures or personal property attached
16 to the real property security, and (ii) any other rights and remedies permitted by
17 law.

18 (b) Before the secured lender may waive its lien against any parcel of real
19 property security pursuant to paragraph (1) of subdivision (a) on the basis of the
20 environmental impairment contemplated by paragraph (3) of subdivision (e), (i)
21 the secured lender shall provide written notice of the default to the borrower, and
22 (ii) the value of the subject real property security shall be established and its
23 environmentally impaired status shall be confirmed by an order of a court of
24 competent jurisdiction in an action brought by the secured lender against the
25 borrower. The complaint for a valuation and confirmation action may include
26 causes of action for a money judgment for all or part of the secured obligation, in
27 which case the waiver of the secured lender's liens under paragraph (1) of
28 subdivision (a) shall result only if and when a final money judgment is obtained
29 against the borrower.

30 (c) If a secured lender elects the rights and remedies permitted by paragraph (1)
31 of subdivision (a) and the borrower's obligations are also secured by other real
32 property security, fixtures, or personal property, the secured lender shall first
33 foreclose against the additional collateral to the extent required by applicable law
34 in which case the amount of the judgment of the secured lender pursuant to
35 paragraph (1) of subdivision (a) shall be limited to the extent Section 580a or
36 580d, or subdivision (b) of Section 726 apply to the foreclosures of additional real
37 property security. The borrower may waive or modify the foreclosure
38 requirements of this subdivision provided that the waiver or modification is in
39 writing and signed by the borrower after default.

40 (d) Subdivision (a) shall be inapplicable if all of the following are true:

41 (1) The release or threatened release was not knowingly or negligently caused or
42 contributed to, or knowingly or willfully permitted or acquiesced to, by any of the
43 following:

1 (A) The borrower or any related party.

2 (B) Any affiliate or agent of the borrower or any related party.

3 (2) In conjunction with the making, renewal, or modification of the loan,
4 extension of credit, guaranty, or other obligation secured by the real property
5 security, neither the borrower, any related party, nor any affiliate or agent of either
6 the borrower or any related party had actual knowledge or notice of the release or
7 threatened release, or if a person had knowledge or notice of the release or
8 threatened release, the borrower made written disclosure thereof to the secured
9 lender after the secured lender's written request for information concerning the
10 environmental condition of the real property security, or the secured lender
11 otherwise obtained actual knowledge thereof, prior to the making, renewal, or
12 modification of the obligation.

13 (e) For purposes of this section:

14 (1) "Affected parcel" means any portion of a parcel of real property security that
15 is (A) contiguous to the environmentally impaired parcel, even if separated by
16 roads, streets, utility easements, or railroad rights-of-way, (B) part of an approved
17 or proposed subdivision within the meaning of Section 66424 of the Government
18 Code, of which the environmentally impaired parcel is also a part, or (C) within
19 2,000 feet of the environmentally impaired parcel.

20 (2) "Borrower" means the trustor under a deed of trust, or a mortgagor under a
21 mortgage, where the deed of trust or mortgage encumbers real property security
22 and secures the performance of the trustor or mortgagor under a loan, extension of
23 credit, guaranty, or other obligation. The term includes any successor-in-interest of
24 the trustor or mortgagor to the real property security before the deed of trust or
25 mortgage has been discharged, reconveyed, or foreclosed upon.

26 (3) "Environmentally impaired" means that the estimated costs to clean up and
27 remediate a past or present release or threatened release of any hazardous
28 substance into, onto, beneath, or from the real property security, not disclosed in
29 writing to, or otherwise actually known by, the secured lender prior to the making
30 of the loan or extension of credit secured by the real property security, exceeds 25
31 percent of the higher of the aggregate fair market value of all security for the loan
32 or extension of credit (A) at the time of the making of the loan or extension of
33 credit, or (B) at the time of the discovery of the release or threatened release by the
34 secured lender. For the purposes of this definition, the estimated cost to clean up
35 and remediate the contamination caused by the release or threatened release shall
36 include only those costs that would be incurred reasonably and in good faith, and
37 fair market value shall be determined without giving consideration to the release
38 or threatened release, and shall be exclusive of the amount of all liens and
39 encumbrances against the security that are senior in priority to the lien of the
40 secured lender. Notwithstanding the foregoing, the real property security for any
41 loan or extension of credit secured by a single parcel of real property which is
42 included in the National Priorities List pursuant to Section 9605 of Title 42 of the
43 United States Code, or in any list published by the Department of Toxic

1 Substances Control pursuant to subdivision (b) of Section 25356 of the Health and
2 Safety Code, shall be deemed to be environmentally impaired.

3 (4) “Hazardous substance” means any of the following:

4 (A) Any “hazardous substance” as defined in subdivision (h) of Section 25281
5 of the Health and Safety Code.

6 (B) Any “waste” as defined in subdivision (d) of Section 13050 of the Water
7 Code.

8 (C) Petroleum, including crude oil or any fraction thereof, natural gas, natural
9 gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture
10 thereof.

11 (5) “Real property security” means any real property and improvements, other
12 than a separate interest and any related interest in the common area of a residential
13 common interest development, as the terms “separate interest,” “common area,”
14 and “common interest development” are defined in ~~Section 1351~~ Sections 4095,
15 4100, and 4185 of the Civil Code, or real property which contains only 1 to 15
16 dwelling units, which in either case (A) is solely used (i) for residential purposes,
17 or (ii) if reasonably contemplated by the parties to the deed of trust or mortgage,
18 for residential purposes as well as limited agricultural or commercial purposes
19 incidental thereto, and (B) is the subject of an issued certificate of occupancy
20 unless the dwelling is to be owned and occupied by the borrower.

21 (6) “Related party” means any person who shares an ownership interest with the
22 borrower in the real property security, or is a partner or joint venturer with the
23 borrower in a partnership or joint venture, the business of which includes the
24 acquisition, development, use, lease, or sale of the real property security.

25 (7) “Release” means any spilling, leaking, pumping, pouring, emitting,
26 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into
27 the environment, including continuing migration, of hazardous substances into,
28 onto, or through soil, surface water, or groundwater. The term does not include
29 actions directly relating to the incorporation in a lawful manner of building
30 materials into a permanent improvement to the real property security.

31 (8) “Secured lender” means the beneficiary under a deed of trust against the real
32 property security, or the mortgagee under a mortgage against the real property
33 security, and any successor-in-interest of the beneficiary or mortgagee to the deed
34 of trust or mortgage.

35 (f) This section shall not be construed to invalidate or otherwise affect in any
36 manner any rights or obligations arising under contract in connection with a loan
37 or extension of credit, including, without limitation, provisions limiting recourse.

38 (g) This section shall only apply to loans, extensions of credit, guaranties, or
39 other obligations secured by real property security made, renewed, or modified on
40 or after January 1, 1992.

41 **Comment.** Section 726.5 is amended to correct cross-references to former Civil Code Section
42 1351(b), (c), (l).

1 **Code Civ. Proc. § 729.035 (amended). Right of redemption on sale of separate interest in**
2 **common interest development**

3 SEC. _____. Section 729.035 of the Code of Civil Procedure is amended to read:

4 729.035. Notwithstanding any provision of law to the contrary, the sale of a
5 separate interest in a common interest development is subject to the right of
6 redemption within 90 days after the sale if the sale arises from a foreclosure by the
7 association of a common interest development pursuant to ~~subdivision (g) of~~
8 ~~Section 1367.1~~ Sections 5700, 5710, and 5735 of the Civil Code, subject to the
9 conditions of ~~Section 1367.4~~ Sections 5705, 5715, and 5720 of the Civil Code.

10 **Comment.** Section 729.035 is amended to correct cross-references to former Civil Code
11 Sections 1367.1 and 1367.4.

12 **Code Civ. Proc. § 736 (amended). Action for breach of environmental provision**

13 SEC. _____. Section 736 of the Code of Civil Procedure is amended to read:

14 736. (a) Notwithstanding any other provision of law, a secured lender may bring
15 an action for breach of contract against a borrower for breach of any
16 environmental provision made by the borrower relating to the real property
17 security, for the recovery of damages, and for the enforcement of the
18 environmental provision, and that action or failure to foreclose first against
19 collateral shall not constitute an action within the meaning of subdivision (a) of
20 Section 726, or constitute a money judgment for a deficiency or a deficiency
21 judgment within the meaning of Section 580a, 580b, or 580d, or subdivision (b) of
22 Section 726. No injunction for the enforcement of an environmental provision may
23 be issued after (1) the obligation secured by the real property security has been
24 fully satisfied, or (2) all of the borrower's rights, title, and interest in and to the
25 real property security has been transferred in a bona fide transaction to an
26 unaffiliated third party for fair value.

27 (b) The damages a secured lender may recover pursuant to subdivision (a) shall
28 be limited to reimbursement or indemnification of the following:

29 (1) If not pursuant to an order of any federal, state, or local governmental agency
30 relating to the cleanup, remediation, or other response action required by
31 applicable law, those costs relating to a reasonable and good faith cleanup,
32 remediation, or other response action concerning a release or threatened release of
33 hazardous substances which is anticipated by the environmental provision.

34 (2) If pursuant to an order of any federal, state, or local governmental agency
35 relating to the cleanup, remediation, or other response action required by
36 applicable law which is anticipated by the environmental provision, all amounts
37 reasonably advanced in good faith by the secured lender in connection therewith,
38 provided that the secured lender negotiated, or attempted to negotiate, in good
39 faith to minimize the amounts it was required to advance under the order.

40 (3) Indemnification against all liabilities of the secured lender to any third party
41 relating to the breach and not arising from acts, omissions, or other conduct which
42 occur after the borrower is no longer an owner or operator of the real property

1 security, and provided the secured lender is not responsible for the
2 environmentally impaired condition of the real property security in accordance
3 with the standards set forth in subdivision (d) of Section 726.5. For purposes of
4 this paragraph, the term “owner or operator” means those persons described in
5 Section 101(20)(A) of the Comprehensive Environmental Response,
6 Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601, et
7 seq.).

8 (4) Attorneys’ fees and costs incurred by the secured lender relating to the
9 breach.

10 The damages a secured lender may recover pursuant to subdivision (a) shall not
11 include (i) any part of the principal amount or accrued interest of the secured
12 obligation, except for any amounts advanced by the secured lender to cure or
13 mitigate the breach of the environmental provision that are added to the principal
14 amount, and contractual interest thereon, or (ii) amounts which relate to a release
15 which was knowingly permitted, caused, or contributed to by the secured lender or
16 any affiliate or agent of the secured lender.

17 (c) A secured lender may not recover damages against a borrower pursuant to
18 subdivision (a) for amounts advanced or obligations incurred for the cleanup or
19 other remediation of real property security, and related attorneys’ fees and costs, if
20 all of the following are true:

21 (1) The original principal amount of, or commitment for, the loan or other
22 obligation secured by the real property security did not exceed two hundred
23 thousand dollars (\$200,000).

24 (2) In conjunction with the secured lender’s acceptance of the environmental
25 provision, the secured lender agreed in writing to accept the real property security
26 on the basis of a completed environmental site assessment and other relevant
27 information from the borrower.

28 (3) The borrower did not permit, cause, or contribute to the release or threatened
29 release.

30 (4) The deed of trust or mortgage covering the real property security has not
31 been discharged, reconveyed, or foreclosed upon.

32 (d) This section is not intended to establish, abrogate, modify, limit, or otherwise
33 affect any cause of action other than that provided by subdivision (a) that a
34 secured lender may have against a borrower under an environmental provision.

35 (e) This section shall apply only to environmental provisions contracted in
36 conjunction with loans, extensions of credit, guaranties, or other obligations made,
37 renewed, or modified on or after January 1, 1992. Notwithstanding the foregoing,
38 this section shall not be construed to validate, invalidate, or otherwise affect in any
39 manner the rights and obligations of the parties to, or the enforcement of,
40 environmental provisions contracted before January 1, 1992.

41 (f) For purposes of this section:

42 (1) “Borrower” means the trustor under a deed of trust, or a mortgagor under a
43 mortgage, where the deed of trust or mortgage encumbers real property security

1 and secures the performance of the trustor or mortgagor under a loan, extension of
2 credit, guaranty, or other obligation. The term includes any successor-in-interest of
3 the trustor or mortgagor to the real property security before the deed of trust or
4 mortgage has been discharged, reconveyed, or foreclosed upon.

5 (2) “Environmental provision” means any written representation, warranty,
6 indemnity, promise, or covenant relating to the existence, location, nature, use,
7 generation, manufacture, storage, disposal, handling, or past, present, or future
8 release or threatened release, of any hazardous substance into, onto, beneath, or
9 from the real property security, or to past, present, or future compliance with any
10 law relating thereto, made by a borrower in conjunction with the making, renewal,
11 or modification of a loan, extension of credit, guaranty, or other obligation
12 involving the borrower, whether or not the representation, warranty, indemnity,
13 promise, or covenant is or was contained in or secured by the deed of trust or
14 mortgage, and whether or not the deed of trust or mortgage has been discharged,
15 reconveyed, or foreclosed upon.

16 (3) “Hazardous substance” means any of the following:

17 (A) Any “hazardous substance” as defined in subdivision (h) of Section 25281
18 of the Health and Safety Code.

19 (B) Any “waste” as defined in subdivision (d) of Section 13050 of the Water
20 Code.

21 (C) Petroleum, including crude oil or any fraction thereof, natural gas, natural
22 gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture
23 thereof.

24 (4) “Real property security” means any real property and improvements, other
25 than a separate interest and any related interest in the common area of a residential
26 common interest development, as the terms “separate interest,” “common area,”
27 and “common interest development” are defined in ~~Section 1351~~ Sections 4095,
28 4100, and 4185 of the Civil Code, or real property which contains only 1 to 15
29 dwelling units, which in either case (A) is solely used (i) for residential purposes,
30 or (ii) if reasonably contemplated by the parties to the deed of trust or mortgage,
31 for residential purposes as well as limited agricultural or commercial purposes
32 incidental thereto, and (B) is the subject of an issued certificate of occupancy
33 unless the dwelling is to be owned and occupied by the borrower.

34 (5) “Release” means any spilling, leaking, pumping, pouring, emitting,
35 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into
36 the environment, including continuing migration, of hazardous substances into,
37 onto, or through soil, surface water, or groundwater. The term does not include
38 actions directly relating to the incorporation in a lawful manner of building
39 materials into a permanent improvement to the real property security.

40 (6) “Secured lender” means the beneficiary under a deed of trust against the real
41 property security, or the mortgagee under a mortgage against the real property
42 security, and any successor-in-interest of the beneficiary or mortgagee to the deed
43 of trust or mortgage.

1 **Comment.** Section 736 is amended to correct cross-references to former Civil Code Section
2 1351(b), (c), (d).

GOVERNMENT CODE

3 **Gov't Code § 12191 (amended). Miscellaneous business entity filing fees**

4 SEC. _____. Section 12191 of the Government Code is amended to read:

5 12191. The miscellaneous business entity filing fees are the following:

6 (a) Foreign Associations, as defined in Sections 170 and 171 of the Corporations
7 Code:

8 (1) Filing the statement and designation upon the qualification of a foreign
9 association pursuant to Section 2105 of the Corporations Code: One hundred
10 dollars (\$100).

11 (2) Filing an amended statement and designation by a foreign association
12 pursuant to Section 2107 of the Corporations Code: Thirty dollars (\$30).

13 (3) Filing a certificate showing the surrender of the right of a foreign association
14 to transact intrastate business pursuant to Section 2112 of the Corporations Code:
15 No fee.

16 (b) Unincorporated Associations:

17 (1) Filing a statement in accordance with Section 24003 of the Corporations
18 Code as to principal place of office or place for sending notices or designating
19 agent for service: Twenty-five dollars (\$25).

20 (2) Insignia Registrations: Ten dollars (\$10).

21 (c) Community Associations and Common Interest Developments:

22 (1) Filing a statement by a community association in accordance with Section
23 ~~1363.6~~ 5405 of the Civil Code to register the common interest development that it
24 manages: An amount not to exceed thirty dollars (\$30).

25 (2) Filing an amended statement by a community association in accordance with
26 Section ~~1363.6~~ 5405 of the Civil Code: No fee.

27 **Comment.** Section 12191 is amended to correct cross-references to former Civil Code Section
28 1363.6.

29 **Gov't Code § 12956.1 (amended). Restrictive covenant based on discriminatory grounds**

30 SEC. _____. Section 12956.1 of the Government Code is amended to read:

31 12956.1. (a) As used in this section, "association," "governing documents," and
32 "declaration" have the same meanings as set forth in ~~Section 1351~~ Sections 4080,
33 4135, and 4150 of the Civil Code.

34 (b)(1) A county recorder, title insurance company, escrow company, real estate
35 broker, real estate agent, or association that provides a copy of a declaration,
36 governing document, or deed to any person shall place a cover page or stamp on
37 the first page of the previously recorded document or documents stating, in at least
38 14-point boldface type, the following:

1 “If this document contains any restriction based on race, color, religion, sex,
2 sexual orientation, familial status, marital status, disability, national origin, source
3 of income as defined in subdivision (p) of Section 12955, or ancestry, that
4 restriction violates state and federal fair housing laws and is void, and may be
5 removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions
6 under state and federal law on the age of occupants in senior housing or housing
7 for older persons shall not be construed as restrictions based on familial status.”

8 (2) The requirements set forth in paragraph (1) shall not apply to documents
9 being submitted for recordation to a county recorder.

10 (c) Any person who records a document for the express purpose of adding a
11 racially restrictive covenant is guilty of a misdemeanor. The county recorder shall
12 not incur any liability for recording the document. Notwithstanding any other
13 provision of law, a prosecution for a violation of this subdivision shall commence
14 within three years after the discovery of the recording of the document.

15 **Comment.** Section 12956.1 is amended to correct cross-references to former Civil Code
16 Section 1351(a), (h), (j).

17 **Gov’t Code § 12956.2 (amended). Restrictive Covenant Modification**

18 SEC. _____. Section 12956.2 of the Government Code is amended to read:

19 12956.2. (a) A person who holds an ownership interest of record in property that
20 he or she believes is the subject of an unlawfully restrictive covenant in violation
21 of subdivision (l) of Section 12955 may record a document titled Restrictive
22 Covenant Modification. The county recorder may choose to waive the fee
23 prescribed for recording and indexing instruments pursuant to Section 27361 in
24 the case of the modification document provided for in this section. The
25 modification document shall include a complete copy of the original document
26 containing the unlawfully restrictive language with the unlawfully restrictive
27 language stricken.

28 (b) Before recording the modification document, the county recorder shall
29 submit the modification document and the original document to the county
30 counsel who shall determine whether the original document contains an unlawful
31 restriction based on race, color, religion, sex, sexual orientation, familial status,
32 marital status, disability, national origin, source of income as defined in
33 subdivision (p) of Section 12955, or ancestry. The county counsel shall return the
34 documents and inform the county recorder of its determination. The county
35 recorder shall refuse to record the modification document if the county counsel
36 finds that the original document does not contain an unlawful restriction as
37 specified in this paragraph.

38 (c) The modification document shall be indexed in the same manner as the
39 original document being modified. It shall contain a recording reference to the
40 original document in the form of a book and page or instrument number, and date
41 of the recording.

(d) Subject to covenants, conditions, and restrictions that were recorded after the recording of the original document that contains the unlawfully restrictive language and subject to covenants, conditions, and restrictions that will be recorded after the Restrictive Covenant Modification, the restrictions in the Restrictive Covenant Modification, once recorded, are the only restrictions having effect on the property. The effective date of the terms and conditions of the modification document shall be the same as the effective date of the original document.

(e) The county recorder shall make available to the public Restrictive Covenant Modification forms.

(f) If the holder of an ownership interest of record in property causes to be recorded a modified document pursuant to this section that contains modifications not authorized by this section, the county recorder shall not incur liability for recording the document. The liability that may result from the unauthorized recordation is the sole responsibility of the holder of the ownership interest of record who caused the modified recordation.

(g) This section does not apply to persons holding an ownership interest in property that is part of a common interest development as defined in subdivision ~~(c) of Section 1351~~ 4100 of the Civil Code if the board of directors of that common interest development is subject to the requirements of subdivision (b) of Section ~~1352.5~~ 4225 of the Civil Code.

Comment. Section 12956.2 is amended to correct cross-references to former Civil Code Sections 1351(c) and 1352.5(b).

Gov't Code § 53341.5 (amended). Lot, parcel, or unit of subdivision subject to special tax

SEC. _____. Section 53341.5 of the Government Code is amended to read:

53341.5. (a) If a lot, parcel, or unit of a subdivision is subject to a special tax levied pursuant to this chapter, the subdivider, his or her agent, or representative, shall not sell, or lease for a term exceeding five years, or permit a prospective purchaser or lessor to sign a contract of purchase or a deposit receipt or any substantially equivalent document in the event of a lease with respect to the lot, parcel, or unit, or cause it to be sold or leased for a term exceeding five years, until the prospective purchaser or lessee of the lot, parcel, or unit has been furnished with and has signed a written notice as provided in this section. The notice shall contain the heading "NOTICE OF SPECIAL TAX" in type no smaller than 8-point type, and shall be in substantially the following form. The form may be modified as needed to clearly and accurately describe the tax structure and other characteristics of districts created before January 1, 1993, or to clearly and accurately consolidate information about the tax structure and other characteristics of two or more districts that levy or are authorized to levy special taxes with respect to the lot, parcel, or unit:

(b) "Subdivision," as used in subdivision (a), means improved or unimproved land that is divided or proposed to be divided for the purpose of sale, lease, or

1 financing, whether immediate or future, into two or more lots, parcels, or units and
2 includes a condominium project, as defined by Section ~~1350~~ 4125 of the Civil
3 Code, a community apartment project, a stock cooperative, and a limited-equity
4 housing cooperative, as defined in Sections 11004, 11003.2, and 11003.4,
5 respectively, of the Business and Professions Code.

6 (c) The buyer shall have three days after delivery in person or five days after
7 delivery by deposit in the mail of any notice required by this section, to terminate
8 his or her agreement by delivery of written notice of that termination to the owner,
9 subdivider, or agent.

10 (d) The failure to furnish the notice to the buyer or lessee, and failure of the
11 buyer or lessee to sign the notice of a special tax, shall not invalidate any grant,
12 conveyance, lease, or encumbrance.

13 (e) Any person or entity who willfully violates the provisions of this section
14 shall be liable to the purchaser of a lot or unit that is subject to the provisions of
15 this section, for actual damages, and in addition thereto, shall be guilty of a public
16 offense punishable by a fine in an amount not to exceed five hundred dollars
17 (\$500). In an action to enforce a liability or fine, the prevailing party shall be
18 awarded reasonable attorney's fees.

19 **Comment.** Section 53341.5 is amended to correct and update an erroneous cross-reference to
20 former Civil Code Section 1350. The section should have referred to Civil Code Section 1351(f),
21 which is continued in Civil Code Section 4125.

22 **Gov't Code § 65008 (amended). Invalidity of discriminatory act**

23 SEC. _____. Section 65008 of the Government Code is amended to read:

24 65008. (a) Any action pursuant to this title by any city, county, city and county,
25 or other local governmental agency in this state is null and void if it denies to any
26 individual or group of individuals the enjoyment of residence, landownership,
27 tenancy, or any other land use in this state because of any of the following reasons:

28 (1)(A) The lawful occupation, age, or any characteristic of the individual or
29 group of individuals listed in subdivision (a) or (d) of Section 12955, as those
30 bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1)
31 of subdivision (p) of Section 12955 and Section 12955.2.

32 (B) Notwithstanding subparagraph (A), with respect to familial status,
33 subparagraph (A) shall not be construed to apply to housing for older persons, as
34 defined in Section 12955.9. With respect to familial status, nothing in
35 subparagraph (A) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
36 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
37 Subdivision (d) of Section 51 and Section ~~1360~~ 4760 of the Civil Code and
38 subdivisions (n), (o), and (p) of Section 12955 of this code shall apply to
39 subparagraph (A).

40 (2) The method of financing of any residential development of the individual or
41 group of individuals.

1 (3) The intended occupancy of any residential development by persons or
2 families of very low, low, moderate, or middle income.

3 (b)(1) No city, county, city and county, or other local governmental agency
4 shall, in the enactment or administration of ordinances pursuant to any law,
5 including this title, prohibit or discriminate against any residential development or
6 emergency shelter for any of the following reasons:

7 (A) Because of the method of financing.

8 (B)(i) Because of the lawful occupation, age, or any characteristic listed in
9 subdivision (a) or (d) of Section 12955, as those characteristics are defined in
10 Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of
11 Section 12955, and Section 12955.2 of the owners or intended occupants of the
12 residential development or emergency shelter.

13 (ii) Notwithstanding clause (i), with respect to familial status, clause (i) shall not
14 be construed to apply to housing for older persons, as defined in Section 12955.9.
15 With respect to familial status, nothing in clause (i) shall be construed to affect
16 Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to
17 housing for senior citizens. Subdivision (d) of Section 51 and Section ~~1360~~ 4760
18 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of this code
19 shall apply to clause (i).

20 (C) Because the development or shelter is intended for occupancy by persons
21 and families of very low, low, or moderate income, as defined in Section 50093 of
22 the Health and Safety Code, or persons and families of middle income.

23 (D) Because the development consists of a multifamily residential project that is
24 consistent with both the jurisdiction's zoning ordinance and general plan as they
25 existed on the date the application was deemed complete, except that a project
26 shall not be deemed to be inconsistent with the zoning designation for the site if
27 that zoning designation is inconsistent with the general plan only because the
28 project site has not been rezoned to conform with a more recently adopted general
29 plan.

30 (2) The discrimination prohibited by this subdivision includes the denial or
31 conditioning of a residential development or shelter because of, in whole or in
32 part, either of the following:

33 (A) The method of financing.

34 (B) The occupancy of the development by persons protected by this subdivision,
35 including, but not limited to, persons and families of very low, low, or moderate
36 income.

37 (3) A city, county, city and county, or other local government agency may not,
38 pursuant to subdivision (d) of Section 65589.5, disapprove a housing development
39 project or condition approval of a housing development project in a manner that
40 renders the project infeasible if the basis for the disapproval or conditional
41 approval includes any of the reasons prohibited in paragraph (1) or (2).

1 (c) For the purposes of this section, “persons and families of middle income”
2 means persons and families whose income does not exceed 150 percent of the
3 median income for the county in which the persons or families reside.

4 (d)(1) No city, county, city and county, or other local governmental agency may
5 impose different requirements on a residential development or emergency shelter
6 that is subsidized, financed, insured, or otherwise assisted by the federal or state
7 government or by a local public entity, as defined in Section 50079 of the Health
8 and Safety Code, than those imposed on nonassisted developments, except as
9 provided in subdivision (e). The discrimination prohibited by this subdivision
10 includes the denial or conditioning of a residential development or emergency
11 shelter based in whole or in part on the fact that the development is subsidized,
12 financed, insured, or otherwise assisted as described in this paragraph.

13 (2)(A) No city, county, city and county, or other local governmental agency
14 may, because of the lawful occupation age, or any characteristic of the intended
15 occupants listed in subdivision (a) or (d) of Section 12955, as those characteristics
16 are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of
17 subdivision (p) of Section 12955, and Section 12955.2 or because the development
18 is intended for occupancy by persons and families of very low, low, moderate, or
19 middle income, impose different requirements on these residential developments
20 than those imposed on developments generally, except as provided in subdivision
21 (e).

22 (B) Notwithstanding subparagraph (A), with respect to familial status,
23 subparagraph (A) shall not be construed to apply to housing for older persons, as
24 defined in Section 12955.9. With respect to familial status, nothing in
25 subparagraph (A) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
26 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
27 Subdivision (d) of Section 51 and Section ~~1360~~ 4760 of the Civil Code and
28 subdivisions (n), (o), and (p) of Section 12955 of this code shall apply to
29 subparagraph (A).

30 (e) Notwithstanding subdivisions (a) to (d), inclusive, this section and this title
31 do not prohibit either of the following:

32 (1) The County of Riverside from enacting and enforcing zoning to provide
33 housing for older persons, in accordance with state or federal law, if that zoning
34 was enacted prior to January 1, 1995.

35 (2) Any city, county, or city and county from extending preferential treatment to
36 residential developments or emergency shelters assisted by the federal or state
37 government or by a local public entity, as defined in Section 50079 of the Health
38 and Safety Code, or other residential developments or emergency shelters intended
39 for occupancy by persons and families of low and moderate income, as defined in
40 Section 50093 of the Health and Safety Code, or persons and families of middle
41 income, or agricultural employees, as defined in subdivision (b) of Section 1140.4
42 of the Labor Code, and their families. This preferential treatment may include, but
43 need not be limited to, reduction or waiver of fees or changes in architectural

1 requirements, site development and property line requirements, building setback
2 requirements, or vehicle parking requirements that reduce development costs of
3 these developments.

4 (f) “Residential development,” as used in this section, means a single-family
5 residence or a multifamily residence, including manufactured homes, as defined in
6 Section 18007 of the Health and Safety Code.

7 (g) This section shall apply to chartered cities.

8 (h) The Legislature finds and declares that discriminatory practices that inhibit
9 the development of housing for persons and families of very low, low, moderate,
10 and middle income, or emergency shelters for the homeless, are a matter of
11 statewide concern.

12 **Comment.** Section 65008 is amended to correct cross-references to former Civil Code Section
13 1360.

14 **Gov’t Code § 65915 (amended). Applicant seeking density bonus**

15 SEC. _____. Section 65915 of the Government Code is amended to read:

16 65915. (a) When an applicant seeks a density bonus for a housing development
17 within, or for the donation of land for housing within, the jurisdiction of a city,
18 county, or city and county, that local government shall provide the applicant with
19 incentives or concessions for the production of housing units and child care
20 facilities as prescribed in this section. All cities, counties, or cities and counties
21 shall adopt an ordinance that specifies how compliance with this section will be
22 implemented. Failure to adopt an ordinance shall not relieve a city, county, or city
23 and county from complying with this section.

24 (b)(1) A city, county, or city and county shall grant one density bonus, the
25 amount of which shall be as specified in subdivision (f), and incentives or
26 concessions, as described in subdivision (d), when an applicant for a housing
27 development seeks and agrees to construct a housing development, excluding any
28 units permitted by the density bonus awarded pursuant to this section, that will
29 contain at least any one of the following:

30 (A) Ten percent of the total units of a housing development for lower income
31 households, as defined in Section 50079.5 of the Health and Safety Code.

32 (B) Five percent of the total units of a housing development for very low income
33 households, as defined in Section 50105 of the Health and Safety Code.

34 (C) A senior citizen housing development, as defined in Sections 51.3 and 51.12
35 of the Civil Code, or mobilehome park that limits residency based on age
36 requirements for housing for older persons pursuant to Section 798.76 or 799.5 of
37 the Civil Code.

38 (D) Ten percent of the total dwelling units in a common interest development as
39 defined in Section ~~1351~~ 4100 of the Civil Code for persons and families of
40 moderate income, as defined in Section 50093 of the Health and Safety Code,
41 provided that all units in the development are offered to the public for purchase.

1 (2) For purposes of calculating the amount of the density bonus pursuant to
2 subdivision (f), the applicant who requests a density bonus pursuant to this
3 subdivision shall elect whether the bonus shall be awarded on the basis of
4 subparagraph (A), (B), (C), or (D) of paragraph (1).

5 (3) For the purposes of this section, “total units” or “total dwelling units” does
6 not include units added by a density bonus awarded pursuant to this section or any
7 local law granting a greater density bonus.

8 (c)(1) An applicant shall agree to, and the city, county, or city and county shall
9 ensure, continued affordability of all low- and very low income units that qualified
10 the applicant for the award of the density bonus for 30 years or a longer period of
11 time if required by the construction or mortgage financing assistance program,
12 mortgage insurance program, or rental subsidy program. Rents for the lower
13 income density bonus units shall be set at an affordable rent as defined in Section
14 50053 of the Health and Safety Code. Owner-occupied units shall be available at
15 an affordable housing cost as defined in Section 50052.5 of the Health and Safety
16 Code.

17 (2) An applicant shall agree to, and the city, county, or city and county shall
18 ensure that, the initial occupant of the moderate-income units that are directly
19 related to the receipt of the density bonus in the common interest development, as
20 defined in Section ~~1354~~ 4100 of the Civil Code, are persons and families of
21 moderate income, as defined in Section 50093 of the Health and Safety Code, and
22 that the units are offered at an affordable housing cost, as that cost is defined in
23 Section 50052.5 of the Health and Safety Code. The local government shall
24 enforce an equity sharing agreement, unless it is in conflict with the requirements
25 of another public funding source or law. The following apply to the equity sharing
26 agreement:

27 (A) Upon resale, the seller of the unit shall retain the value of any
28 improvements, the downpayment, and the seller’s proportionate share of
29 appreciation. The local government shall recapture any initial subsidy, as defined
30 in subparagraph (B), and its proportionate share of appreciation, as defined in
31 subparagraph (C), which amount shall be used within five years for any of the
32 purposes described in subdivision (e) of Section 33334.2 of the Health and Safety
33 Code that promote home ownership.

34 (B) For purposes of this subdivision, the local government’s initial subsidy shall
35 be equal to the fair market value of the home at the time of initial sale minus the
36 initial sale price to the moderate-income household, plus the amount of any
37 downpayment assistance or mortgage assistance. If upon resale the market value is
38 lower than the initial market value, then the value at the time of the resale shall be
39 used as the initial market value.

40 (C) For purposes of this subdivision, the local government’s proportionate share
41 of appreciation shall be equal to the ratio of the local government’s initial subsidy
42 to the fair market value of the home at the time of initial sale.

1 (d)(1) An applicant for a density bonus pursuant to subdivision (b) may submit
2 to a city, county, or city and county a proposal for the specific incentives or
3 concessions that the applicant requests pursuant to this section, and may request a
4 meeting with the city, county, or city and county. The city, county, or city and
5 county shall grant the concession or incentive requested by the applicant unless the
6 city, county, or city and county makes a written finding, based upon substantial
7 evidence, of any of the following:

8 (A) The concession or incentive is not required in order to provide for affordable
9 housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for
10 rents for the targeted units to be set as specified in subdivision (c).

11 (B) The concession or incentive would have a specific adverse impact, as
12 defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health
13 and safety or the physical environment or on any real property that is listed in the
14 California Register of Historical Resources and for which there is no feasible
15 method to satisfactorily mitigate or avoid the specific adverse impact without
16 rendering the development unaffordable to low- and moderate-income households.

17 (C) The concession or incentive would be contrary to state or federal law.

18 (2) The applicant shall receive the following number of incentives or
19 concessions:

20 (A) One incentive or concession for projects that include at least 10 percent of
21 the total units for lower income households, at least 5 percent for very low income
22 households, or at least 10 percent for persons and families of moderate income in a
23 common interest development.

24 (B) Two incentives or concessions for projects that include at least 20 percent of
25 the total units for lower income households, at least 10 percent for very low
26 income households, or at least 20 percent for persons and families of moderate
27 income in a common interest development.

28 (C) Three incentives or concessions for projects that include at least 30 percent
29 of the total units for lower income households, at least 15 percent for very low
30 income households, or at least 30 percent for persons and families of moderate
31 income in a common interest development.

32 (3) The applicant may initiate judicial proceedings if the city, county, or city and
33 county refuses to grant a requested density bonus, incentive, or concession. If a
34 court finds that the refusal to grant a requested density bonus, incentive, or
35 concession is in violation of this section, the court shall award the plaintiff
36 reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be
37 interpreted to require a local government to grant an incentive or concession that
38 has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of
39 Section 65589.5, upon health, safety, or the physical environment, and for which
40 there is no feasible method to satisfactorily mitigate or avoid the specific adverse
41 impact. Nothing in this subdivision shall be interpreted to require a local
42 government to grant an incentive or concession that would have an adverse impact
43 on any real property that is listed in the California Register of Historical


1 Resources. The city, county, or city and county shall establish procedures for
2 carrying out this section, that shall include legislative body approval of the means
3 of compliance with this section.

4 (e)(1) In no case may a city, county, or city and county apply any development
5 standard that will have the effect of physically precluding the construction of a
6 development meeting the criteria of subdivision (b) at the densities or with the
7 concessions or incentives permitted by this section. An applicant may submit to a
8 city, county, or city and county a proposal for the waiver or reduction of
9 development standards that will have the effect of physically precluding the
10 construction of a development meeting the criteria of subdivision (b) at the
11 densities or with the concessions or incentives permitted under this section, and
12 may request a meeting with the city, county, or city and county. If a court finds
13 that the refusal to grant a waiver or reduction of development standards is in
14 violation of this section, the court shall award the plaintiff reasonable attorney's
15 fees and costs of suit. Nothing in this subdivision shall be interpreted to require a
16 local government to waive or reduce development standards if the waiver or
17 reduction would have a specific, adverse impact, as defined in paragraph (2) of
18 subdivision (d) of Section 65589.5, upon health, safety, or the physical
19 environment, and for which there is no feasible method to satisfactorily mitigate or
20 avoid the specific adverse impact. Nothing in this subdivision shall be interpreted
21 to require a local government to waive or reduce development standards that
22 would have an adverse impact on any real property that is listed in the California
23 Register of Historical Resources, or to grant any waiver or reduction that would be
24 contrary to state or federal law.

25 (2) A proposal for the waiver or reduction of development standards pursuant to
26 this subdivision shall neither reduce nor increase the number of incentives or
27 concessions to which the applicant is entitled pursuant to subdivision (d).

28 (f) For the purposes of this chapter, "density bonus" means a density increase
29 over the otherwise maximum allowable residential density as of the date of
30 application by the applicant to the city, county, or city and county. The applicant
31 may elect to accept a lesser percentage of density bonus. The amount of density
32 bonus to which the applicant is entitled shall vary according to the amount by
33 which the percentage of affordable housing units exceeds the percentage
34 established in subdivision (b).

35 (1) For housing developments meeting the criteria of subparagraph (A) of
36 paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

37
38  **Note.** A table has been omitted to conserve resources.

39
40 (2) For housing developments meeting the criteria of subparagraph (B) of
41 paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Note. A table has been omitted to conserve resources.

(3) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of senior housing units.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Note. A table has been omitted to conserve resources.

(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.

(g)(1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county in accordance with this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density for the entire development, as follows:

Note. A table has been omitted to conserve resources.

(2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks an increase pursuant to both this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:

(A) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(B) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(C) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned with appropriate development standards for development at

1 the density described in paragraph (3) of subdivision (c) of Section 65583.2, and is
2 or will be served by adequate public facilities and infrastructure.

3 (D) The transferred land shall have all of the permits and approvals, other than
4 building permits, necessary for the development of the very low income housing
5 units on the transferred land, not later than the date of approval of the final
6 subdivision map, parcel map, or residential development application, except that
7 the local government may subject the proposed development to subsequent design
8 review to the extent authorized by subdivision (i) of Section 65583.2 if the design
9 is not reviewed by the local government prior to the time of transfer.

10 (E) The transferred land and the affordable units shall be subject to a deed
11 restriction ensuring continued affordability of the units consistent with paragraphs
12 (1) and (2) of subdivision (c), which shall be recorded on the property at the time
13 of the transfer.

14 (F) The land is transferred to the local agency or to a housing developer
15 approved by the local agency. The local agency may require the applicant to
16 identify and transfer the land to the developer.

17 (G) The transferred land shall be within the boundary of the proposed
18 development or, if the local agency agrees, within one-quarter mile of the
19 boundary of the proposed development.

20 (H) A proposed source of funding for the very low income units shall be
21 identified not later than the date of approval of the final subdivision map, parcel
22 map, or residential development application.

23 (h)(1) When an applicant proposes to construct a housing development that
24 conforms to the requirements of subdivision (b) and includes a child care facility
25 that will be located on the premises of, as part of, or adjacent to, the project, the
26 city, county, or city and county shall grant either of the following:

27 (A) An additional density bonus that is an amount of square feet of residential
28 space that is equal to or greater than the amount of square feet in the child care
29 facility.

30 (B) An additional concession or incentive that contributes significantly to the
31 economic feasibility of the construction of the child care facility.

32 (2) The city, county, or city and county shall require, as a condition of approving
33 the housing development, that the following occur:

34 (A) The child care facility shall remain in operation for a period of time that is
35 as long as or longer than the period of time during which the density bonus units
36 are required to remain affordable pursuant to subdivision (c).

37 (B) Of the children who attend the child care facility, the children of very low
38 income households, lower income households, or families of moderate income
39 shall equal a percentage that is equal to or greater than the percentage of dwelling
40 units that are required for very low income households, lower income households,
41 or families of moderate income pursuant to subdivision (b).

42 (3) Notwithstanding any requirement of this subdivision, a city, county, or a city
43 and county shall not be required to provide a density bonus or concession for a

1 child care facility if it finds, based upon substantial evidence, that the community
2 has adequate child care facilities.

3 (4) “Child care facility,” as used in this section, means a child day care facility
4 other than a family day care home, including, but not limited to, infant centers,
5 preschools, extended day care facilities, and schoolage child care centers.

6 (i) “Housing development,” as used in this section, means a development project
7 for five or more residential units. For the purposes of this section, “housing
8 development” also includes a subdivision or common interest development, as
9 defined in Section ~~1354~~ 4100 of the Civil Code, approved by a city, county, or city
10 and county and consists of residential units or unimproved residential lots and
11 either a project to substantially rehabilitate and convert an existing commercial
12 building to residential use or the substantial rehabilitation of an existing
13 multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the
14 result of the rehabilitation would be a net increase in available residential units.
15 For the purpose of calculating a density bonus, the residential units shall be on
16 contiguous sites that are the subject of one development application, but do not
17 have to be based upon individual subdivision maps or parcels. The density bonus
18 shall be permitted in geographic areas of the housing development other than the
19 areas where the units for the lower income households are located.

20 (j) The granting of a concession or incentive shall not be interpreted, in and of
21 itself, to require a general plan amendment, local coastal plan amendment, zoning
22 change, or other discretionary approval. This provision is declaratory of existing
23 law.

24 (k) For the purposes of this chapter, concession or incentive means any of the
25 following:

26 (1) A reduction in site development standards or a modification of zoning code
27 requirements or architectural design requirements that exceed the minimum
28 building standards approved by the California Building Standards Commission as
29 provided in Part 2.5 (commencing with Section 18901) of Division 13 of the
30 Health and Safety Code, including, but not limited to, a reduction in setback and
31 square footage requirements and in the ratio of vehicular parking spaces that
32 would otherwise be required that results in identifiable, financially sufficient, and
33 actual cost reductions.

34 (2) Approval of mixed use zoning in conjunction with the housing project if
35 commercial, office, industrial, or other land uses will reduce the cost of the
36 housing development and if the commercial, office, industrial, or other land uses
37 are compatible with the housing project and the existing or planned development
38 in the area where the proposed housing project will be located.

39 (3) Other regulatory incentives or concessions proposed by the developer or the
40 city, county, or city and county that result in identifiable, financially sufficient,
41 and actual cost reductions.

42 (l) Subdivision (k) does not limit or require the provision of direct financial
43 incentives for the housing development, including the provision of publicly owned

1 land, by the city, county, or city and county, or the waiver of fees or dedication
2 requirements.

3 (m) Nothing in this section shall be construed to supersede or in any way alter or
4 lessen the effect or application of the California Coastal Act (Division 20
5 (commencing with Section 30000) of the Public Resources Code).

6 (n) If permitted by local ordinance, nothing in this section shall be construed to
7 prohibit a city, county, or city and county from granting a density bonus greater
8 than what is described in this section for a development that meets the
9 requirements of this section or from granting a proportionately lower density
10 bonus than what is required by this section for developments that do not meet the
11 requirements of this section.

12 (o) For purposes of this section, the following definitions shall apply:

13 (1) “Development standard” includes a site or construction condition, including,
14 but not limited to, a height limitation, a setback requirement, a floor area ratio, an
15 onsite open-space requirement, or a parking ratio that applies to a residential
16 development pursuant to any ordinance, general plan element, specific plan,
17 charter, or other local condition, law, policy, resolution, or regulation.

18 (2) “Maximum allowable residential density” means the density allowed under
19 the zoning ordinance and land use element of the general plan, or if a range of
20 density is permitted, means the maximum allowable density for the specific zoning
21 range and land use element of the general plan applicable to the project. Where the
22 density allowed under the zoning ordinance is inconsistent with the density
23 allowed under the land use element of the general plan, the general plan density
24 shall prevail.

25 (p)(1) Upon the request of the developer, no city, county, or city and county
26 shall require a vehicular parking ratio, inclusive of handicapped and guest parking,
27 of a development meeting the criteria of subdivision (b), that exceeds the
28 following ratios:

29 (A) Zero to one bedroom: one onsite parking space.

30 (B) Two to three bedrooms: two onsite parking spaces.

31 (C) Four and more bedrooms: two and one-half parking spaces.

32 (2) If the total number of parking spaces required for a development is other
33 than a whole number, the number shall be rounded up to the next whole number.
34 For purposes of this subdivision, a development may provide “onsite parking”
35 through tandem parking or uncovered parking, but not through onstreet parking.

36 (3) This subdivision shall apply to a development that meets the requirements of
37 subdivision (b) but only at the request of the applicant. An applicant may request
38 parking incentives or concessions beyond those provided in this subdivision
39 pursuant to subdivision (d).

40 **Comment.** Section 65915 is amended to correct cross-references to former Civil Code Section
41 1351(c).

1 **Gov't Code § 65995.5 (amended). Alternative calculation of amounts**

2 SEC. _____. Section 65995.5 of the Government Code is amended to read:

3 65995.5. (a) The governing board of a school district may impose the amount
4 calculated pursuant to this section as an alternative to the amount that may be
5 imposed on residential construction calculated pursuant to subdivision (b) of
6 Section 65995.

7 (b) To be eligible to impose the fee, charge, dedication, or other requirement up
8 to the amount calculated pursuant to this section, a governing board shall do all of
9 the following:

10 (1) Make a timely application to the State Allocation Board for new construction
11 funding for which it is eligible and be determined by the board to meet the
12 eligibility requirements for new construction funding set forth in Article 2
13 (commencing with Section 17071.10) and Article 3 (commencing with Section
14 17071.75) of Chapter 12.5 of Part 10 of the Education Code. A governing board
15 that submits an application to determine the district's eligibility for new
16 construction funding shall be deemed eligible if the State Allocation Board fails to
17 notify the district of the district's eligibility within 120 days of receipt of the
18 application.

19 (2) Conduct and adopt a school facility needs analysis pursuant to Section
20 65995.6.

21 (3) Until January 1, 2000, satisfy at least one of the requirements set forth in
22 subparagraphs (A) to (D), inclusive, and, on and after January 1, 2000, satisfy at
23 least two of the requirements set forth in subparagraphs (A) to (D), inclusive:

24 (A) The district is a unified or elementary school district that has a substantial
25 enrollment of its elementary school pupils on a multitrack year-round schedule.
26 "Substantial enrollment" for purposes of this paragraph means at least 30 percent
27 of district pupils in kindergarten and grades 1 to 6, inclusive, in the high school
28 attendance area in which all or some of the new residential units identified in the
29 needs analysis are planned for construction. A high school district shall be deemed
30 to have met the requirements of this paragraph if either of the following apply:

31 (i) At least 30 percent of the high school district's pupils are on a multitrack
32 year-round schedule.

33 (ii) At least 40 percent of the pupils enrolled in public schools in kindergarten
34 and grades 1 to 12, inclusive, within the boundaries of the high school attendance
35 area for which the school district is applying for new facilities are enrolled in
36 multitrack year-round schools.

37 (B) The district has placed on the ballot in the previous four years a local
38 general obligation bond to finance school facilities and the measure received at
39 least 50 percent plus one of the votes cast.

40 (C) The district meets one of the following:

41 (i) The district has issued debt or incurred obligations for capital outlay in an
42 amount equivalent to 15 percent of the district's local bonding capacity, including
43 indebtedness that is repaid from property taxes, parcel taxes, the district's general

1 fund, special taxes levied pursuant to Section 4 of Article XIII A of the California
2 Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with
3 Section 53311) of Division 2 of Title 5 that are approved by a vote of registered
4 voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section
5 53311) of Division 2 of Title 5 that are approved by a vote of landowners prior to
6 November 4, 1998, and revenues received pursuant to the Community
7 Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of
8 the Health and Safety Code). Indebtedness or other obligation to finance school
9 facilities to be owned, leased, or used by the district, that is incurred by another
10 public agency, shall be counted for the purpose of calculating whether the district
11 has met the debt percentage requirement contained herein.

12 (ii) The district has issued debt or incurred obligations for capital outlay in an
13 amount equivalent to 30 percent of the district's local bonding capacity, including
14 indebtedness that is repaid from property taxes, parcel taxes, the district's general
15 fund, special taxes levied pursuant to Section 4 of Article XIII A of the California
16 Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with
17 Section 53311) of Division 2 of Title 5 that are approved by a vote of registered
18 voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section
19 53311) of Division 2 of Title 5 that are approved by a vote of landowners after
20 November 4, 1998, and revenues received pursuant to the Community
21 Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of
22 the Health and Safety Code). Indebtedness or other obligation to finance school
23 facilities to be owned, leased, or used by the district, that is incurred by another
24 public agency, shall be counted for the purpose of calculating whether the district
25 has met the debt percentage requirement contained herein.

26 (D) At least 20 percent of the teaching stations within the district are relocatable
27 classrooms.

28 (c) The maximum square foot fee, charge, dedication, or other requirement
29 authorized by this section that may be collected in accordance with Chapter 6
30 (commencing with Section 17620) of Part 10.5 of the Education Code shall be
31 calculated by a governing board of a school district, as follows:

32 (1) The number of unhoused pupils identified in the school facilities needs
33 analysis shall be multiplied by the appropriate amounts provided in subdivision (a)
34 of Section 17072.10. This sum shall be added to the site acquisition and
35 development cost determined pursuant to subdivision (h).

36 (2) The full amount of local funds the governing board has dedicated to facilities
37 necessitated by new construction shall be subtracted from the amount determined
38 pursuant to paragraph (1). Local funds include fees, charges, dedications, or other
39 requirements imposed on commercial or industrial construction.

40 (3) The resulting amount determined pursuant to paragraph (2) shall be divided
41 by the projected total square footage of assessable space of residential units
42 anticipated to be constructed during the next five-year period in the school district
43 or the city and county in which the school district is located. The estimate of the

1 projected total square footage shall be based on information available from the city
2 or county within which the residential units are anticipated to be constructed or a
3 market report prepared by an independent third party.

4 (d) A school district that has a common territorial jurisdiction with a district that
5 imposes the fee, charge, dedication, or other requirement up to the amount
6 calculated pursuant to this section or Section 65995.7, may not impose a fee,
7 charge, dedication, or other requirement on residential construction that exceeds
8 the limit set forth in subdivision (b) of Section 65995 less the portion of that
9 amount it would be required to share pursuant to Section 17623 of the Education
10 Code, unless that district is eligible to impose the fee, charge, dedication, or other
11 requirement up to the amount calculated pursuant to this section or Section
12 65995.7.

13 (e) Nothing in this section is intended to limit or discourage the joint use of
14 school facilities or to limit the ability of a school district to construct school
15 facilities that exceed the amount of funds authorized by Section 17620 of the
16 Education Code and provided by the state grant program, if the additional costs are
17 funded solely by local revenue sources other than fees, charges, dedications, or
18 other requirements imposed on new construction.

19 (f) Except as provided in paragraph (5) of subdivision (a) of Section 17620 of
20 the Education Code, a fee, charge, dedication, or other requirement authorized
21 under this section and Section 65995.7 shall be expended solely on the school
22 facilities identified in the needs analysis as being attributable to projected
23 enrollment growth from the construction of new residential units. This subdivision
24 does not preclude the expenditure of a fee, charge, dedication, or other
25 requirement, authorized pursuant to subparagraph (C) of paragraph (1) of
26 subdivision (a) of Section 17620, on school facilities identified in the needs
27 analysis as necessary due to projected enrollment growth attributable to the new
28 residential units.

29 (g) “Residential units” and “residences” as used in this section and in Sections
30 65995.6 and 65995.7 means the development of single-family detached housing
31 units, single-family attached housing units, manufactured homes and
32 mobilehomes, as defined in subdivision (f) of Section 17625 of the Education
33 Code, condominiums, and multifamily housing units, including apartments,
34 residential hotels, as defined in paragraph (1) of subdivision (b) of Section 50519
35 of the Health and Safety Code, and stock cooperatives, as defined in Section ~~1351~~
36 4190 of the Civil Code.

37 (h) Site acquisition costs shall not exceed half of the amount determined by
38 multiplying the land acreage determined to be necessary under the guidelines of
39 the State Department of Education, as published in the “School Site Analysis and
40 Development Handbook,” as that handbook read as of January 1, 1998, by the
41 estimated cost determined pursuant to Section 17072.12 of the Education Code.
42 Site development costs shall not exceed the estimated amount that would be

1 funded by the State Allocation Board pursuant to its regulations governing grants
2 for site development costs.

3 **Comment.** Section 65995.5 is amended to correct a cross-reference to former Civil Code
4 Section 1351(m).

5 **Gov't Code § 66411 (amended). Local control of common interest developments and**
6 **subdivision design and improvement**

7 SEC. _____. Section 66411 of the Government Code is amended to read:
8 66411. Regulation and control of the design and improvement of subdivisions
9 are vested in the legislative bodies of local agencies. Each local agency shall, by
10 ordinance, regulate and control the initial design and improvement of common
11 interest developments as defined in Section ~~1351~~ 4100 of the Civil Code and
12 subdivisions for which this division requires a tentative and final or parcel map. In
13 the development, adoption, revision, and application of ~~such~~ this type of
14 ordinance, the local agency shall comply with the provisions of Section 65913.2.
15 The ordinance shall specifically provide for proper grading and erosion control,
16 including the prevention of sedimentation or damage to offsite property. Each
17 local agency may by ordinance regulate and control other subdivisions, provided
18 that the regulations are not more restrictive than the regulations for those
19 subdivisions for which a tentative and final or parcel map are required by this
20 division, and provided further that the regulations shall not be applied to short-
21 term leases (terminable by either party on not more than 30 days' notice in
22 writing) of a portion of the operating right-of-way of a railroad corporation as
23 defined by Section 230 of the Public Utilities Code unless a showing is made in
24 individual cases, under substantial evidence, that public policy necessitates the
25 application of the regulations to those short-term leases in individual cases.

26 **Comment.** Section 66411 is amended to correct a cross-reference to former Civil Code Section
27 1351(c).

28 Section 66411 is also amended to make a stylistic revision.

29 **Gov't Code § 66412 (amended). Application of Subdivision Map Act**

30 66412. This division shall be inapplicable to any of the following:
31 (a) The financing or leasing of apartments, offices, stores, or similar space
32 within apartment buildings, industrial buildings, commercial buildings,
33 mobilehome parks, or trailer parks.
34 (b) Mineral, oil, or gas leases.
35 (c) Land dedicated for cemetery purposes under the Health and Safety Code.
36 (d) A lot line adjustment between four or fewer existing adjoining parcels,
37 where the land taken from one parcel is added to an adjoining parcel, and where a
38 greater number of parcels than originally existed is not thereby created, if the lot
39 line adjustment is approved by the local agency, or advisory agency. A local
40 agency or advisory agency shall limit its review and approval to a determination of
41 whether or not the parcels resulting from the lot line adjustment will conform to

1 the local general plan, any applicable specific plan, any applicable coastal plan,
2 and zoning and building ordinances. An advisory agency or local agency shall not
3 impose conditions or exactions on its approval of a lot line adjustment except to
4 conform to the local general plan, any applicable specific plan, any applicable
5 coastal plan, and zoning and building ordinances, to require the prepayment of real
6 property taxes prior to the approval of the lot line adjustment, or to facilitate the
7 relocation of existing utilities, infrastructure, or easements. No tentative map,
8 parcel map, or final map shall be required as a condition to the approval of a lot
9 line adjustment. The lot line adjustment shall be reflected in a deed, which shall be
10 recorded. No record of survey shall be required for a lot line adjustment unless
11 required by Section 8762 of the Business and Professions Code. A local agency
12 shall approve or disapprove a lot line adjustment pursuant to the Permit
13 Streamlining Act (Chapter 4.5 (commencing with Section 65920) of Division 1).

14 (e) Boundary line or exchange agreements to which the State Lands
15 Commission or a local agency holding a trust grant of tide and submerged lands is
16 a party.

17 (f) Any separate assessment under Section 2188.7 of the Revenue and Taxation
18 Code.

19 (g) The conversion of a community apartment project, as defined in Section
20 ~~1351~~ 4105 of the Civil Code, to a condominium, as defined in Section 783 of the
21 Civil Code, but only if all of the following requirements are met:

22 (1) The property was subdivided before January 1, 1982, as evidenced by a
23 recorded deed creating the community apartment project.

24 (2) Subject to compliance with ~~subdivision (e) of Section 1351~~ Sections 4290
25 and 4295 of the Civil Code, all conveyances and other documents necessary to
26 effectuate the conversion shall be executed by the required number of owners in
27 the project as specified in the bylaws or other organizational documents. If the
28 bylaws or other organizational documents do not expressly specify the number of
29 owners necessary to execute the conveyances and other documents, a majority of
30 owners in the project shall be required to execute the conveyances or other
31 documents. Conveyances and other documents executed under the foregoing
32 provisions shall be binding upon and affect the interests of all parties in the
33 project.

34 (3) If subdivision, as defined in Section 66424, of the property occurred after
35 January 1, 1964, both of the following requirements are met:

36 (A) A final or parcel map of that subdivision was approved by the local agency
37 and recorded, with all of the conditions of that map remaining in effect after the
38 conversion.

39 (B) No more than 49 percent of the units in the project were owned by any one
40 person as defined in Section 17, including an incorporator or director of the
41 community apartment project, on January 1, 1982.

42 (4) The local agency certifies that the above requirements were satisfied if the
43 local agency, by ordinance, provides for that certification.

1 (h) The conversion of a stock cooperative, as defined in Section ~~1351~~ 4190 of
2 the Civil Code, to a condominium, as defined in Section 783 of the Civil Code, but
3 only if all of the following requirements are met:

4 (1) The property was subdivided before January 1, 1982, as evidenced by a
5 recorded deed creating the stock cooperative, an assignment of lease, or issuance
6 of shares to a stockholder.

7 (2) A person renting a unit in a cooperative shall be entitled at the time of
8 conversion to all tenant rights in state or local law, including, but not limited to,
9 rights respecting first refusal, notice, and displacement and relocation benefits.

10 (3) Subject to compliance with ~~subdivision (e) of Section 1351~~ Sections 4290
11 and 4295 of the Civil Code, all conveyances and other documents necessary to
12 effectuate the conversion shall be executed by the required number of owners in
13 the cooperative as specified in the bylaws or other organizational documents. If
14 the bylaws or other organizational documents do not expressly specify the number
15 of owners necessary to execute the conveyances and other documents, a majority
16 of owners in the cooperative shall be required to execute the conveyances or other
17 documents. Conveyances and other documents executed under the foregoing
18 provisions shall be binding upon and affect the interests of all parties in the
19 cooperative.

20 (4) If subdivision, as defined in Section 66424, of the property occurred after
21 January 1, 1980, both of the following requirements are met:

22 (A) A final or parcel map of that subdivision was approved by the local agency
23 and recorded, with all of the conditions of that map remaining in effect after the
24 conversion.

25 (B) No more than 49 percent of the shares in the project were owned by any one
26 person as defined in Section 17, including an incorporator or director of the
27 cooperative, on January 1, 1982.

28 (5) The local agency certifies that the above requirements were satisfied if the
29 local agency, by ordinance, provides for that certification.

30 (i) The leasing of, or the granting of an easement to, a parcel of land, or any
31 portion or portions thereof, in conjunction with the financing, erection, and sale or
32 lease of a windpowered electrical generation device on the land, if the project is
33 subject to discretionary action by the advisory agency or legislative body.

34 (j) The leasing or licensing of a portion of a parcel, or the granting of an
35 easement, use permit, or similar right on a portion of a parcel, to a telephone
36 corporation as defined in Section 234 of the Public Utilities Code, exclusively for
37 the placement and operation of cellular radio transmission facilities, including, but
38 not limited to, antennae support structures, microwave dishes, structures to house
39 cellular communications transmission equipment, power sources, and other
40 equipment incidental to the transmission of cellular communications, if the project
41 is subject to discretionary action by the advisory agency or legislative body.

(k) Leases of agricultural land for agricultural purposes. As used in this subdivision, “agricultural purposes” means the cultivation of food or fiber, or the grazing or pasturing of livestock.

(l) The leasing of, or the granting of an easement to, a parcel of land, or any portion or portions thereof, in conjunction with the financing, erection, and sale or lease of a solar electrical generation device on the land, if the project is subject to review under other local agency ordinances regulating design and improvement or, if the project is subject to other discretionary action by the advisory agency or legislative body.

(m) The leasing of, or the granting of an easement to, a parcel of land or any portion or portions of the land in conjunction with a biogas project that uses, as part of its operation, agricultural waste or byproducts from the land where the project is located and reduces overall emissions of greenhouse gases from agricultural operations on the land if the project is subject to review under other local agency ordinances regulating design and improvement or if the project is subject to discretionary action by the advisory agency or legislative body.

Comment. Section 66412 is amended to correct cross-references to former Civil Code Sections 1351(d) and (m), and to the substantive requirements of former Civil Code Section 1351(e).

Gov’t Code § 66424 (amended). Subdivision

SEC. _____. Section 66424 of the Government Code is amended to read:

66424. “Subdivision” means the division, by any subdivider, of any unit or units of improved or unimproved land, or any portion thereof, shown on the latest equalized county assessment roll as a unit or as contiguous units, for the purpose of sale, lease or financing, whether immediate or future. Property shall be considered as contiguous units, even if it is separated by roads, streets, utility easement or railroad rights-of-way. “Subdivision” includes a condominium project, as defined in ~~subdivision (f) of Section 1351~~ 4125 of the Civil Code, a community apartment project, as defined in ~~subdivision (d) of Section 1351~~ 4105 of the Civil Code, or the conversion of five or more existing dwelling units to a stock cooperative, as defined in ~~subdivision (m) of Section 1351~~ 4190 of the Civil Code.

Comment. Section 66424 is amended to correct cross-references to former Civil Code Section 1351(d), (f), (m).

Gov’t Code § 66427 (amended). Map of condominium, community apartment project, or stock cooperative project

SEC. _____. Section 66427 of the Government Code is amended to read:

66427. (a) A map of a condominium project, a community apartment project, or of the conversion of five or more existing dwelling units to a stock cooperative project need not show the buildings or the manner in which the buildings or the airspace above the property shown on the map are to be divided, nor shall the

governing body have the right to refuse approval of a parcel, tentative, or final map of the project on account of the design or the location of buildings on the property shown on the map that are not violative of local ordinances or on account of the manner in which airspace is to be divided in conveying the condominium.

(b) A map need not include a condominium plan or plans, as defined in ~~subdivision (e) of Section 1351~~ 4120 of the Civil Code, and the governing body may not refuse approval of a parcel, tentative, or final map of the project on account of the absence of a condominium plan.

(c) Fees and lot design requirements shall be computed and imposed with respect to those maps on the basis of parcels or lots of the surface of the land shown thereon as included in the project.

(d) Nothing herein shall be deemed to limit the power of the legislative body to regulate the design or location of buildings in a project by or pursuant to local ordinances.

(e) If the governing body has approved a parcel map or final map for the establishment of condominiums on property pursuant to the requirements of this division, the separation of a three-dimensional portion or portions of the property from the remainder of the property or the division of that three-dimensional portion or portions into condominiums shall not constitute a further subdivision as defined in Section 66424, provided each of the following conditions has been satisfied:

(1) The total number of condominiums established is not increased above the number authorized by the local agency in approving the parcel map or final map.

(2) A perpetual estate or an estate for years in the remainder of the property is held by the condominium owners in undivided interests in common, or by an association as defined in ~~subdivision (a) of Section 1351~~ 4100 of the Civil Code, and the duration of the estate in the remainder of the property is the same as the duration of the estate in the condominiums.

(3) The three-dimensional portion or portions of property are described on a condominium plan or plans, as defined in ~~subdivision (e) of Section 1351~~ 4120 of the Civil Code.

Comment. Section 66427 is amended to correct cross-references to former Civil Code Section 1351(a), (e).

Gov't Code § 66452.10 (amended). Stock cooperative or community apartment project

SEC. _____. Section 66452.10 of the Government Code is amended to read:

66452.10. A stock cooperative, as defined in Section 11003.2 of the Business and Professions Code, or a community apartment project, as defined in Section 11004 of the Business and Professions Code, shall not be converted to a condominium, as defined in Section 783 of the Civil Code, unless the required number of (1) owners and (2) trustees or beneficiaries of each recorded deed of trust and mortgagees of each recorded mortgage in the cooperative or project, as specified in the bylaws, or other organizational documents, have voted in favor of

1 the conversion. If the bylaws or other organizational documents do not expressly
2 specify the number of votes required to approve the conversion, a majority vote of
3 the (1) owners and (2) trustees or beneficiaries of each recorded deed of trust and
4 mortgagees of each recorded mortgage in the cooperative or project shall be
5 required. Upon approval of the conversion as set forth above and in compliance
6 with ~~subdivision (e) of Section 1351~~ Sections 4290 and 4295 of the Civil Code, all
7 conveyances and other documents necessary to effectuate the conversion shall be
8 executed by the required number of owners in the cooperative or project as
9 specified in the bylaws or other organizational documents. If the bylaws or other
10 organizational documents do not expressly specify the number of owners
11 necessary to execute the conveyances or other documents, a majority of owners in
12 the cooperative or project shall be required to execute the conveyances and other
13 documents. Conveyances and other documents executed under the foregoing
14 provisions shall be binding upon and affect the interests of all parties in the
15 cooperative or project. The provisions of Section 66499.31 shall not apply to a
16 violation of this section.

17 **Comment.** Section 66452.10 is amended to correct a cross-reference to former Civil Code
18 Section 1351(e).

19 **Gov't Code § 66475.2 (amended). Local transit facilities**

20 SEC. _____. Section 66475.2 of the Government Code is amended to read:

21 66475.2. (a) There may be imposed by local ordinance a requirement of a
22 dedication or an irrevocable offer of dedication of land within the subdivision for
23 local transit facilities such as bus turnouts, benches, shelters, landing pads and
24 similar items that directly benefit the residents of a subdivision. The irrevocable
25 offers may be terminated as provided in subdivisions (c) and (d) of Section
26 66477.2.

27 (b) Only the payment of fees in lieu of the dedication of land may be required in
28 subdivisions that consist of the subdivision of airspace in existing buildings into
29 condominium projects, stock cooperatives, or community apartment projects, as
30 those terms are defined in ~~Section 1351~~ Sections 4105, 4125, and 4190 of the Civil
31 Code.

32 **Comment.** Section 66475.2 is amended to correct a cross-reference to former Civil Code
33 Section 1351(d), (f), (m).

34 **Gov't Code § 66477 (amended). Park and recreational purposes**

35 SEC. _____. Section 66477 of the Government Code is amended to read:

36 66477. (a) The legislative body of a city or county may, by ordinance, require
37 the dedication of land or impose a requirement of the payment of fees in lieu
38 thereof, or a combination of both, for park or recreational purposes as a condition
39 to the approval of a tentative map or parcel map, if all of the following
40 requirements are met:

1 (1) The ordinance has been in effect for a period of 30 days prior to the filing of
2 the tentative map of the subdivision or parcel map.

3 (2) The ordinance includes definite standards for determining the proportion of a
4 subdivision to be dedicated and the amount of any fee to be paid in lieu thereof.
5 The amount of land dedicated or fees paid shall be based upon the residential
6 density, which shall be determined on the basis of the approved or conditionally
7 approved tentative map or parcel map and the average number of persons per
8 household. There shall be a rebuttable presumption that the average number of
9 persons per household by units in a structure is the same as that disclosed by the
10 most recent available federal census or a census taken pursuant to Chapter 17
11 (commencing with Section 40200) of Part 2 of Division 3 of Title 4. However, the
12 dedication of land, or the payment of fees, or both, shall not exceed the
13 proportionate amount necessary to provide three acres of park area per 1,000
14 persons residing within a subdivision subject to this section, unless the amount of
15 existing neighborhood and community park area, as calculated pursuant to this
16 subdivision, exceeds that limit, in which case the legislative body may adopt the
17 calculated amount as a higher standard not to exceed five acres per 1,000 persons
18 residing within a subdivision subject to this section.

19 (A) The park area per 1,000 members of the population of the city, county, or
20 local public agency shall be derived from the ratio that the amount of
21 neighborhood and community park acreage bears to the total population of the
22 city, county, or local public agency as shown in the most recent available federal
23 census. The amount of neighborhood and community park acreage shall be the
24 actual acreage of existing neighborhood and community parks of the city, county,
25 or local public agency as shown on its records, plans, recreational element, maps,
26 or reports as of the date of the most recent available federal census.

27 (B) For cities incorporated after the date of the most recent available federal
28 census, the park area per 1,000 members of the population of the city shall be
29 derived from the ratio that the amount of neighborhood and community park
30 acreage shown on the records, maps, or reports of the county in which the newly
31 incorporated city is located bears to the total population of the new city as
32 determined pursuant to Section 11005 of the Revenue and Taxation Code. In
33 making any subsequent calculations pursuant to this section, the county in which
34 the newly incorporated city is located shall not include the figures pertaining to the
35 new city which were calculated pursuant to this paragraph. Fees shall be payable
36 at the time of the recording of the final map or parcel map or at a later time as may
37 be prescribed by local ordinance.

38 (3) The land, fees, or combination thereof are to be used only for the purpose of
39 developing new or rehabilitating existing neighborhood or community park or
40 recreational facilities to serve the subdivision.

41 (4) The legislative body has adopted a general plan or specific plan containing
42 policies and standards for parks and recreation facilities, and the park and
43 recreational facilities are in accordance with definite principles and standards.

1 (5) The amount and location of land to be dedicated or the fees to be paid shall
2 bear a reasonable relationship to the use of the park and recreational facilities by
3 the future inhabitants of the subdivision.

4 (6) The city, county, or other local public agency to which the land or fees are
5 conveyed or paid shall develop a schedule specifying how, when, and where it will
6 use the land or fees, or both, to develop park or recreational facilities to serve the
7 residents of the subdivision. Any fees collected under the ordinance shall be
8 committed within five years after the payment of the fees or the issuance of
9 building permits on one-half of the lots created by the subdivision, whichever
10 occurs later. If the fees are not committed, they, without any deductions, shall be
11 distributed and paid to the then record owners of the subdivision in the same
12 proportion that the size of their lot bears to the total area of all lots within the
13 subdivision.

14 (7) Only the payment of fees may be required in subdivisions containing 50
15 parcels or less, except that when a condominium project, stock cooperative, or
16 community apartment project, as those terms are defined in ~~Section 1351~~ Sections
17 4105, 4125, and 4190 of the Civil Code, exceeds 50 dwelling units, dedication of
18 land may be required notwithstanding that the number of parcels may be less than
19 50.

20 (8) Subdivisions containing less than five parcels and not used for residential
21 purposes shall be exempted from the requirements of this section. However, in that
22 event, a condition may be placed on the approval of a parcel map that if a building
23 permit is requested for construction of a residential structure or structures on one
24 or more of the parcels within four years, the fee may be required to be paid by the
25 owner of each parcel as a condition of the issuance of the permit.

26 (9) If the subdivider provides park and recreational improvements to the
27 dedicated land, the value of the improvements together with any equipment
28 located thereon shall be a credit against the payment of fees or dedication of land
29 required by the ordinance.

30 (b) Land or fees required under this section shall be conveyed or paid directly to
31 the local public agency which provides park and recreational services on a
32 communitywide level and to the area within which the proposed development will
33 be located, if that agency elects to accept the land or fee. The local agency
34 accepting the land or funds shall develop the land or use the funds in the manner
35 provided in this section.

36 (c) If park and recreational services and facilities are provided by a public
37 agency other than a city or a county, the amount and location of land to be
38 dedicated or fees to be paid shall, subject to paragraph (2) of subdivision (a), be
39 jointly determined by the city or county having jurisdiction and that other public
40 agency.

41 (d) This section does not apply to commercial or industrial subdivisions or to
42 condominium projects or stock cooperatives that consist of the subdivision of

1 airspace in an existing apartment building that is more than five years old when no
2 new dwelling units are added.

3 (e) Common interest developments, as defined in Section ~~1351~~ 4100 of the Civil
4 Code, shall be eligible to receive a credit, as determined by the legislative body,
5 against the amount of land required to be dedicated, or the amount of the fee
6 imposed, pursuant to this section, for the value of private open space within the
7 development which is usable for active recreational uses.

8 (f) Park and recreation purposes shall include land and facilities for the activity
9 of “recreational community gardening,” which activity consists of the cultivation
10 by persons other than, or in addition to, the owner of the land, of plant material not
11 for sale.

12 (g) This section shall be known and may be cited as the Quimby Act.

13 **Comment.** Subdivisions (a) and (e) of Section 66477 are amended to correct cross-references
14 to former Civil Code Section 1351(c), (d), (f), (m).

HEALTH AND SAFETY CODE

15 **Health & Safety Code § 1597.531 (amended). Liability insurance or bond**

16 SEC. _____. Section 1597.531 of the Health and Safety Code is amended to read:

17 1597.531. (a) All family day care homes for children shall maintain in force
18 either liability insurance covering injury to clients and guests in the amount of at
19 least one hundred thousand dollars (\$100,000) per occurrence and three hundred
20 thousand dollars (\$300,000) in the total annual aggregate, sustained on account of
21 the negligence of the licensee or its employees, or a bond in the aggregate amount
22 of three hundred thousand dollars (\$300,000). In lieu of the liability insurance or
23 the bond, the family day care home may maintain a file of affidavits signed by
24 each parent with a child enrolled in the home which meets the requirements of this
25 subdivision. The affidavit shall state that the parent has been informed that the
26 family day care home does not carry liability insurance or a bond according to
27 standards established by the state. If the provider does not own the premises used
28 as the family day care home, the affidavit shall also state that the parent has been
29 informed that the liability insurance, if any, of the owner of the property or the
30 homeowners’ association, as appropriate, may not provide coverage for losses
31 arising out of, or in connection with, the operation of the family day care home,
32 except to the extent that the losses are caused by, or result from, an action or
33 omission by the owner of the property or the homeowners’ association, for which
34 the owner of the property or the homeowners’ association would otherwise be
35 liable under the law. These affidavits shall be on a form provided by the
36 department and shall be reviewed at each licensing inspection.

37 (b) A family day care home that maintains liability insurance or a bond pursuant
38 to this section, and that provides care in premises that are rented or leased or uses
39 premises which share common space governed by a homeowners’ association,

1 shall name the owner of the property or the homeowners' association, as
2 appropriate, as an additional insured party on the liability insurance policy or bond
3 if all of the following conditions are met:

4 (1) The owner of the property or governing body of the homeowners'
5 association makes a written request to be added as an additional insured party.

6 (2) The addition of the owner of the property or the homeowners' association
7 does not result in cancellation or nonrenewal of the insurance policy or bond
8 carried by the family day care home.

9 (3) Any additional premium assessed for this coverage is paid by the owner of
10 the property or the homeowners' association.

11 (c) As used in this section, "homeowners' association" means an association of a
12 common interest development, as defined in ~~Section 1351~~ Sections 4080 and 4100
13 of the Civil Code.

14 **Comment.** Section 1597.531 is amended to correct cross-references to former Civil Code
15 Section 1351(a), (c).

16 **Health & Safety Code § 13132.7 (amended). Fire retardant roof covering that meets**
17 **building standards**

18 SEC. _____. Section 13132.7 of the Health and Safety Code is amended to read:

19 13132.7. (a) Within a very high fire hazard severity zone designated by the
20 Director of Forestry and Fire Protection pursuant to Article 9 (commencing with
21 Section 4201) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code
22 and within a very high hazard severity zone designated by a local agency pursuant
23 to Chapter 6.8 (commencing with Section 51175) of Part 1 of Division 1 of Title 5
24 of the Government Code, the entire roof covering of every existing structure
25 where more than 50 percent of the total roof area is replaced within any one-year
26 period, every new structure, and any roof covering applied in the alteration, repair,
27 or replacement of the roof of every existing structure, shall be a fire retardant roof
28 covering that is at least class B as defined in the Uniform Building Code, as
29 adopted and amended by the State Building Standards Commission.

30 (b) In all other areas, the entire roof covering of every existing structure where
31 more than 50 percent of the total roof area is replaced within any one-year period,
32 every new structure, and any roof covering applied in the alteration, repair, or
33 replacement of the roof of every existing structure, shall be a fire retardant roof
34 covering that is at least class C as defined in the Uniform Building Code, as
35 adopted and amended by the State Building Standards Commission.

36 (c) Notwithstanding subdivision (b), within state responsibility areas classified
37 by the State Board of Forestry and Fire Protection pursuant to Article 3
38 (commencing with Section 4125) of Chapter 1 of Part 2 of Division 4 of the Public
39 Resources Code, except for those state responsibility areas designated as moderate
40 fire hazard responsibility zones, the entire roof covering of every existing structure
41 where more than 50 percent of the total roof area is replaced within any one-year
42 period, every new structure, and any roof covering applied in the alteration, repair,

1 or replacement of the roof of every existing structure, shall be a fire retardant roof
2 covering that is at least class B as defined in the Uniform Building Code, as
3 adopted and amended by the State Building Standards Commission.

4 (d)(1) Notwithstanding subdivision (a), (b), or (c), within very high fire hazard
5 severity zones designated by the Director of Forestry and Fire Protection pursuant
6 to Article 9 (commencing with Section 4201) of Chapter 1 of Part 2 of Division 4
7 of the Public Resources Code or by a local agency pursuant to Chapter 6.8
8 (commencing with Section 51175) of Part 1 of Division 1 of Title 5 of the
9 Government Code, the entire roof covering of every existing structure where more
10 than 50 percent of the total roof area is replaced within any one-year period, every
11 new structure, and any roof covering applied in the alteration, repair, or
12 replacement of the roof of every existing structure, shall be a fire retardant roof
13 covering that is at least class A as defined in the Uniform Building Code, as
14 adopted and amended by the State Building Standards Commission.

15 (2) Paragraph (1) does not apply to any jurisdiction containing a very high fire
16 hazard severity zone if the jurisdiction fulfills both of the following requirements:

17 (A) Adopts the model ordinance approved by the State Fire Marshal pursuant to
18 Section 51189 of the Government Code or an ordinance that substantially
19 conforms to the model ordinance of the State Fire Marshal.

20 (B) Transmits, upon adoption, a copy of the ordinance to the State Fire Marshal.

21 (e) The State Building Standards Commission shall incorporate the requirements
22 set forth in subdivisions (a), (b), and (c) by publishing them as an amendment to
23 the California Building Standards Code in accordance with Chapter 4
24 (commencing with Section 18935) of Part 2.5 of Division 13.

25 (f) Nothing in this section shall limit the authority of a city, county, city and
26 county, or fire protection district in establishing more restrictive requirements, in
27 accordance with current law, than those specified in this section.

28 (g) This section shall not affect the validity of an ordinance, adopted prior to the
29 effective date for the relevant roofing standard specified in subdivisions (a) and
30 (b), by a city, county, city and county, or fire protection district, unless the
31 ordinance mandates a standard that is less stringent than the standards set forth in
32 subdivision (a), in which case the ordinance shall not be valid on or after the
33 effective date for the relevant roofing standard specified in subdivisions (a) and
34 (b).

35 (h) Any qualified historical building or structure as defined in Section 18955
36 may, on a case-by-case basis, utilize alternative roof constructions as provided by
37 the State Historical Building Code.

38 (i) The installer of the roof covering shall provide certification of the roof
39 covering classification, as provided by the manufacturer or supplier, to the
40 building owner and, when requested, to the agency responsible for enforcement of
41 this part. The installer shall also install the roof covering in accordance with the
42 manufacturer's listing.

1 (j) No wood roof covering materials shall be sold or applied in this state unless
2 both of the following conditions are met:

3 (1) The materials have been approved and listed by the State Fire Marshal as
4 complying with the requirements of this section.

5 (2) The materials have passed at least five years of the 10-year natural
6 weathering test. The 10-year natural weathering test required by this subdivision
7 shall be conducted in accordance with standard 15-2 of the 1994 edition of the
8 Uniform Building Code at a testing facility recognized by the State Fire Marshal.

9 (k) The Insurance Commissioner shall accept the use of fire retardant wood roof
10 covering material that complies with the requirements of this section, used in the
11 partial repair or replacement of nonfire retardant wood roof covering material, as
12 complying with the requirement in Section 2695.9 of Title 10 of the California
13 Code of Regulations relative to matching replacement items in quality, color, and
14 size.

15 (l) No common interest development, as defined in Section ~~1351~~ 4100 of the
16 Civil Code, may require a homeowner to install or repair a roof in a manner that is
17 in violation of this section. The governing documents, as defined in Section ~~1351~~
18 4150 of the Civil Code, of a common interest development within a very high fire
19 severity zone shall allow for at least one type of fire retardant roof covering
20 material that meets the requirements of this section.

21 **Comment.** Section 13132.7 is amended to correct cross-references to former Civil Code
22 Section 1351(c), (j).

23 **Health & Safety Code § 19850 (amended). Filing of building plans**

24 SEC. _____. Section 19850 of the Health and Safety Code is amended to read:

25 19850. The building department of every city or county shall maintain an
26 official copy, which may be on microfilm or other type of photographic copy, of
27 the plans of every building, during the life of the building, for which the
28 department issued a building permit.

29 “Building department” means the department, bureau, or officer charged with
30 the enforcement of laws or ordinances regulating the erection, construction, or
31 alteration of buildings.

32 Except for plans of a common interest development as defined in Section ~~1351~~
33 4100 of the Civil Code, plans need not be filed for:

34 (a) Single or multiple dwellings not more than two stories and basement in
35 height.

36 (b) Garages and other structures appurtenant to buildings described under
37 subdivision (a).

38 (c) Farm or ranch buildings.

39 (d) Any one-story building where the span between bearing walls does not
40 exceed 25 feet. The exemption in this subdivision does not, however, apply to a
41 steel frame or concrete building.

1 **Comment.** Section 19850 is amended to correct a cross-reference to former Civil Code Section
2 1351(c).

3 **Health & Safety Code § 25400.22 (amended). Lien placed on contaminated property**

4 SEC. _____. Section 25400.22 of the Health and Safety Code is amended to read:

5 25400.22. (a) No later than 10 working days after the date when a local health
6 officer determines that property is contaminated pursuant to subdivision (b) of
7 Section 25400.20, the local health officer shall do all of the following:

8 (1) Except as provided in paragraph (2), if the property is real property, record
9 with the county recorder a lien on the property. The lien shall specify all of the
10 following:

11 (A) The name of the agency on whose behalf the lien is imposed.

12 (B) The date on which the property is determined to be contaminated.

13 (C) The legal description of the real property and the assessor's parcel number.

14 (D) The record owner of the property.

15 (E) The amount of the lien, which shall be the greater of two hundred dollars
16 (\$200) or the costs incurred by the local health officer in compliance with this
17 chapter, including, but not limited to, the cost of inspection performed pursuant to
18 Section 25400.19 and the county recorder's fee.

19 (2)(A) If the property is a mobilehome or manufactured home specified in
20 paragraph (2) of subdivision (t) of Section 25400.11, amend the permanent record
21 with a restraint on the mobilehome, or manufactured home with the Department of
22 Housing and Community Development, in the form prescribed by that department,
23 providing notice of the determination that the property is contaminated.

24 (B) If the property is a recreational vehicle specified in paragraph (2) of
25 subdivision (t) of Section 25400.11, perfect by filing with the Department of
26 Motor Vehicles a vehicle license stop on the recreational vehicle in the form
27 prescribed by that department, providing notice of the determination that the
28 property is contaminated.

29 (C) If the property is a mobilehome or manufactured home, not subject to
30 paragraph (2) of subdivision (t) of Section 25400.11, is located on real property,
31 and is not attached to that real property, the local health officer shall record a lien
32 for the real property with the county recorder, and the Department of Housing and
33 Community Development shall amend the permanent record with a restraint for
34 the mobilehome or manufactured home, in the form and with the contents
35 prescribed by that department.

36 (3) A lien, restraint, or vehicle license stop issued pursuant to paragraph (2) shall
37 specify all of the following:

38 (A) The name of the agency on whose behalf the lien, restraint, or vehicle
39 license stop is imposed.

40 (B) The date on which the property is determined to be contaminated.

41 (C) The legal description of the real property and the assessor's parcel number,
42 and the mailing and street address or space number of the manufactured home,

1 mobilehome, or recreational vehicle or the vehicle identification number of the
2 recreational vehicle, if applicable.

3 (D) The registered owner of the mobilehome, manufactured home, or
4 recreational vehicle, if applicable, or the name of the owner of the real property as
5 indicated in the official county records.

6 (E) The amount of the lien, if applicable, which shall be the greater of two
7 hundred dollars (\$200) or the costs incurred by the local health officer in
8 compliance with this chapter, including, but not limited to, the cost of inspection
9 performed pursuant to Section 25400.19 and the fee charged by the Department of
10 Housing and Community Development and the Department of Motor Vehicles
11 pursuant to paragraph (2) of subdivision (b).

12 (F) Other information required by the county recorder for the lien, the
13 Department of Housing and Community Development for the restraint, or the
14 Department of Motor Vehicles for the vehicle license stop.

15 (4) Issue to persons specified in subdivisions (d), (e), and (f) an order
16 prohibiting the use or occupancy of the contaminated portions of the property.

17 (b)(1) The county recorder's fees for recording and indexing documents
18 provided for in this section shall be in the amount specified in Article 5
19 (commencing with Section 27360) of Chapter 6 of Part 3 of Title 3 of the
20 Government Code.

21 (2) The Department of Housing and Community Development and the
22 Department of Motor Vehicles may charge a fee to cover its administrative costs
23 for recording and indexing documents provided for in paragraph (2) of subdivision
24 (a).

25 (c)(1) A lien recorded pursuant to subdivision (a) shall have the force, effect,
26 and priority of a judgment lien. The restraint amending the permanent record
27 pursuant to subdivision (a) shall be displayed on any manufactured home or
28 mobilehome title search until the restraint is released. The vehicle license stop
29 shall remain in effect until it is released.

30 (2) The local health officer shall not authorize the release of a lien, restraint, or
31 vehicle license stop made pursuant to subdivision (a), until one of the following
32 occurs:

33 (A) The property owner satisfies the real property lien, or the contamination in
34 the mobilehome, manufactured home, or recreational vehicle is abated to the
35 satisfaction of the local health officer consistent with the notice in the restraint, or
36 vehicle license stop and the local health officer issues a release pursuant to Section
37 25400.27.

38 (B) For a manufactured home or mobilehome, the local health officer determines
39 that the unit will be destroyed or permanently salvaged. For the purposes of this
40 paragraph, the unit shall not be reregistered after this determination is made unless
41 the local health officer issues a release pursuant to Section 25400.27.

42 (C) The lien, restraint, or vehicle license stop is extinguished by a senior lien in
43 a foreclosure sale.

1 (d) Except as otherwise specified in this section, an order issued pursuant to this
2 section shall be served, either personally or by certified mail, return receipt
3 requested in the following manner:

4 (1) For real property, to all known occupants of the property and to all persons
5 who have an interest in the property, as contained in the records of the recorder's
6 office of the county in which the property is located.

7 (2) In the case of a mobilehome or manufactured home, the order shall be served
8 to the legal owner, as defined in Section 18005.8, each junior lienholder, as
9 defined in Section 18005.3, and the registered owner, as defined in Section
10 18009.5.

11 (3) In the case of a recreational vehicle, the order shall be served on the legal
12 owner, as defined in Section 370 of the Vehicle Code, and the registered owner, as
13 defined in Section 505 of the Vehicle Code.

14 (e) If the whereabouts of the person described in subdivision (d) are unknown
15 and cannot be ascertained by the local health officer, in the exercise of reasonable
16 diligence, and the local health officer makes an affidavit to that effect, the local
17 health officer shall serve the order by personal service or by mailing a copy of the
18 order by certified mail, postage prepaid, return receipt requested, as follows:

19 (1) The order related to real property shall be served to each person at the
20 address appearing on the last equalized tax assessment roll of the county where the
21 property is located, and to all occupants of the affected unit.

22 (2) In the case of a mobilehome or manufactured home, the order shall be served
23 to the legal owner, as defined in Section 18005.8, each junior lienholder, as
24 defined in Section 18005.3, and the registered owner, as defined in Section
25 18009.5, at the address appearing on the permanent record and all occupants of the
26 affected unit at the mobilehome park space.

27 (3) In the case of a recreational vehicle, the order shall be served on the legal
28 owner, as defined in Section 370 of the Vehicle Code, and the registered owner, as
29 defined in Section 505 of the Vehicle Code, at the address appearing on the
30 permanent record and all occupants of the affected vehicle at the mobilehome park
31 or special occupancy park space.

32 (f)(1) The local health officer shall also mail a copy of the order required by this
33 section to the address of each person or party having a recorded right, title, estate,
34 lien, or interest in the property and to the association of a common interest
35 development, as defined in ~~Section 1351~~ Sections 4080 and 4100 of the Civil
36 Code.

37 (2) In addition to the requirements of paragraph (1), if the affected property is a
38 mobilehome, manufactured home, or recreational vehicle, specified in paragraph
39 (2) of subdivision (t) of Section 25400.11, the order issued by the local health
40 officer shall also be served, either personally or by certified mail, return receipt
41 requested, to the owner of the mobilehome park or special occupancy park.

42 (g) The order issued pursuant to this section shall include all of the following
43 information:

- 1 (1) A description of the property.
- 2 (2) The parcel identification number, address, or space number, if applicable.
- 3 (3) The vehicle identification number, if applicable.
- 4 (4) A description of the local health officer's intended course of action.
- 5 (5) A specification of the penalties for noncompliance with the order.
- 6 (6) A prohibition on the use of all or portions of the property that are
- 7 contaminated.
- 8 (7) A description of the measures the property owner is required to take to
- 9 decontaminate the property.
- 10 (8) An indication of the potential health hazards involved.
- 11 (9) A statement that a property owner who fails to provide a notice or disclosure
- 12 that is required by this chapter is subject to a civil penalty of up to five thousand
- 13 dollars (\$5,000).
- 14 (h) The local health officer shall provide a copy of the order to the local building
- 15 or code enforcement agency or other appropriate agency responsible for the
- 16 enforcement of the State Housing Law (Part 1.5 (commencing with Section
- 17 17910) of Division 13).
- 18 (i) The local health officer shall post the order in a conspicuous place on the
- 19 property within one working day of the date that the order is issued.
- 20 **Comment.** Section 25400.22 is amended to correct a cross-reference to former Civil Code
- 21 Section 1351(a), (c).

22 **Health & Safety Code § 25915.2 (amended). Publication and mailing of notice**

- 23 SEC. _____. Section 25915.2 of the Health and Safety Code is amended to read:
- 24 25915.2. (a) Notice provided pursuant to this chapter shall be provided in
- 25 writing to each individual employee, and shall be mailed to other owners
- 26 designated to receive the notice pursuant to subdivision (a) of Section 25915.5,
- 27 within 15 days of the first receipt by the owner of information identifying the
- 28 presence or location of asbestos-containing construction materials in the building.
- 29 This notice shall be provided annually thereafter. In addition, if new information
- 30 regarding those items specified in paragraphs (1) to (5), inclusive, of subdivision
- 31 (a) of Section 25915 has been obtained within 90 days after the notice required by
- 32 this subdivision is provided or any subsequent 90-day period, then a supplemental
- 33 notice shall be provided within 15 days of the close of that 90-day period.
- 34 (b) Notice provided pursuant to this chapter shall be provided to new employees
- 35 within 15 days of commencement of work in the building.
- 36 (c) Notice provided pursuant to this chapter shall be mailed to any new owner
- 37 designated to receive the notice pursuant to subdivision (a) of Section 25915.5
- 38 within 15 days of the effective date of the agreement under which a person
- 39 becomes a new owner.
- 40 (d) Subdivisions (a) and (c) shall not be construed to require owners of a
- 41 building or part of a building within a residential common interest development to
- 42 mail written notification to other owners of a building or part of a building within

1 the residential common interest development, if all the following conditions are
2 met:

3 (1) The association conspicuously posts, in each building or part of a building
4 known to contain asbestos-containing materials, a large sign in a prominent
5 location that fully informs persons entering each building or part of a building
6 within the common interest development that the association knows the building
7 contains asbestos-containing materials.

8 The sign shall also inform persons of the location where further information, as
9 required by this chapter, is available about the asbestos-containing materials
10 known to be located in the building.

11 (2) The owners or association disclose, as soon as practicable before the transfer
12 of title of a separate interest in the common interest development, to a transferee
13 the existence of asbestos-containing material in a building or part of a building
14 within the common interest development.

15 Failure to comply with this section shall not invalidate the transfer of title of real
16 property. This paragraph shall only apply to transfers of title of separate interests
17 in the common interest development of which the owners have knowledge. As
18 used in this section, “association” and “common interest development” are defined
19 in ~~Section 1351~~ Sections 4080 and 4100 of the Civil Code.

20 (e) If a person contracting with an owner receives notice pursuant to this
21 chapter, that contractor shall provide a copy of the notice to his or her employees
22 or contractors working within the building.

23 (f) If the asbestos-containing construction material in the building is limited to
24 an area or areas within the building that meet all the following criteria:

25 (1) Are unique and physically defined.

26 (2) Contain asbestos-containing construction materials in structural, mechanical,
27 or building materials which are not replicated throughout the building.

28 (3) Are not connected to other areas through a common ventilation system; then,
29 an owner required to give notice to his or her employees pursuant to subdivision
30 (a) of Section 25915 or 25915.1 may provide that notice only to the employees
31 working within or entering that area or those areas of the building meeting the
32 conditions above.

33 (g) If the asbestos-containing construction material in the building is limited to
34 an area or areas within the building that meet all the following criteria:

35 (1) Are accessed only by building maintenance employees or contractors and are
36 not accessed by tenants or employees in the building, other than on an incidental
37 basis.

38 (2) Contain asbestos-containing construction materials in structural, mechanical,
39 or building materials which are not replicated in areas of the building which are
40 accessed by tenants and employees.

41 (3) The owner knows that no asbestos fibers are being released or have the
42 reasonable possibility to be released from the material; then, as to that asbestos-
43 containing construction material, an owner required to give notice to his or her

1 employees pursuant to subdivision (a) of Section 25915 or Section 25915.1 may
2 provide that notice only to its building maintenance employees and contractors
3 who have access to that area or those areas of the building meeting the conditions
4 above.

5 (h) In those areas of a building where the asbestos-containing construction
6 material is composed only of asbestos fibers which are completely encapsulated, if
7 the owner knows that no asbestos fibers are being released or have the reasonable
8 possibility to be released from that material in its present condition and has no
9 knowledge that other asbestos-containing material is present, then an owner
10 required to give notice pursuant to subdivision (a) of Section 25915 shall provide
11 the information required in paragraph (2) of subdivision (a) of Section 25915 and
12 may substitute the following notice for the requirements of paragraphs (1), (3), (4),
13 and (5) of subdivision (a) of Section 25915:

14 (1) The existence of, conclusions from, and a description or list of the contents
15 of, that portion of any survey conducted to determine the existence and location of
16 asbestos-containing construction materials within the building that refers to the
17 asbestos materials described in this subdivision, and information describing when
18 and where the results of the survey are available pursuant to Section 25917.

19 (2) Information to convey that moving, drilling, boring, or otherwise disturbing
20 the asbestos-containing construction material identified may present a health risk
21 and, consequently, should not be attempted by an unqualified employee. The
22 notice shall identify the appropriate person the employee is required to contact if
23 the condition of the asbestos-containing construction material deteriorates.

24 **Comment.** Section 25915.2 is amended to correct a cross-reference to former Civil Code
25 Section 1351(a), (c).

26 **Health & Safety Code § 25915.5 (amended). Notice to co-owners**

27 SEC. _____. Section 25915.5 of the Health and Safety Code is amended to read:

28 25915.5. (a) An owner required to give notice to employees pursuant to this
29 chapter, in addition to notifying his or her employees, shall mail, in accordance
30 with this subdivision, a copy of that notice to all other persons who are owners of
31 the building or part of the building, with whom the owner has privity of contract.
32 Receipt of a notice pursuant to this section by an owner, lessee or operator shall
33 constitute knowledge that the building contains asbestos-containing construction
34 materials for purposes of this chapter. Notice to an owner shall be delivered by
35 first-class mail addressed to the person and at the address designated for the
36 receipt of notices under the lease, rental agreement, or contract with the owner.

37 (b) The delivery of notice under this section or negligent failure to provide that
38 notice shall not constitute a breach of any covenant under the lease or rental
39 agreement, and nothing in this chapter enlarges or diminishes any rights or duties
40 respecting constructive eviction.

1 (c) No owner who, in good faith, complies with the provisions of this section
2 shall be liable to any other owner for any damages alleged to have resulted from
3 his or her compliance with the provisions of this section.

4 (d) This section shall not be construed to apply to owners of a building or part of
5 a building within a residential common interest development or association, if the
6 owners comply with the provisions of subdivision (d) of Section 25915.2. For
7 purposes of this section, “association” and “common interest development” are
8 defined in ~~Section 1351~~ Sections 4080 and 4100 of the Civil Code.

9 **Comment.** Section 25915.5 is amended to correct a cross-reference to former Civil Code
10 Section 1351(a), (c).

11 **Health & Safety Code § 33050 (amended). Legislative declaration of policy in undertaking**
12 **community redevelopment projects**

13 SEC. _____. Section 33050 of the Health and Safety Code is amended to read:

14 33050. (a) It is hereby declared to be the policy of the state that in undertaking
15 community redevelopment projects under this part there shall be no discrimination
16 because of any basis listed in subdivision (a) or (d) of Section 12955 of the
17 Government Code, as those bases are defined in Sections 12926, 12926.1,
18 subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and
19 Section 12955.2 of the Government Code.

20 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
21 (a) shall not be construed to apply to housing for older persons, as defined in
22 Section 12955.9 of the Government Code. With respect to familial status, nothing
23 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
24 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
25 Subdivision (d) of Section 51 and Section ~~1360~~ 4760 of the Civil Code and
26 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
27 apply to subdivision (a).

28 **Comment.** Section 33050 is amended to correct a cross-reference to former Civil Code Section
29 1360.

30 **Health & Safety Code § 33435 (amended). Obligation of lessees and purchasers to refrain**
31 **from discrimination**

32 SEC. _____. Section 33435 of the Health and Safety Code is amended to read:

33 33435. (a) Agencies shall obligate lessees and purchasers of real property
34 acquired in redevelopment projects and owners of property improved as a part of a
35 redevelopment project to refrain from restricting the rental, sale, or lease of the
36 property on any basis listed in subdivision (a) or (d) of Section 12955 of the
37 Government Code, as those bases are defined in Sections 12926, 12926.1,
38 subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and
39 Section 12955.2 of the Government Code. All deeds, leases, or contracts for the
40 sale, lease, sublease, or other transfer of any land in a redevelopment project shall

1 contain or be subject to the nondiscrimination or nonsegregation clauses hereafter
2 prescribed.

3 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
4 (a) shall not be construed to apply to housing for older persons, as defined in
5 Section 12955.9 of the Government Code. With respect to familial status, nothing
6 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
7 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
8 Subdivision (d) of Section 51 and Section ~~1360~~ 4760 of the Civil Code and
9 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
10 apply to subdivision (a).

11 **Comment.** Section 33435 is amended to correct a cross-reference to former Civil Code Section
12 1360.

13 **Health & Safety Code § 33436 (amended). Nondiscrimination and nonsegregation clauses**

14 SEC. _____. Section 33436 of the Health and Safety Code is amended to read:

15 33436. Express provisions shall be included in all deeds, leases, and contracts
16 that the agency proposes to enter into with respect to the sale, lease, sublease,
17 transfer, use, occupancy, tenure, or enjoyment of any land in a redevelopment
18 project in substantially the following form:

19 (a)(1) In deeds the following language shall appear -- “The grantee herein
20 covenants by and for himself or herself, his or her heirs, executors, administrators,
21 and assigns, and all persons claiming under or through them, that there shall be no
22 discrimination against or segregation of, any person or group of persons on
23 account of any basis listed in subdivision (a) or (d) of Section 12955 of the
24 Government Code, as those bases are defined in Sections 12926, 12926.1,
25 subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and
26 Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer,
27 use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall
28 the grantee or any person claiming under or through him or her, establish or permit
29 any practice or practices of discrimination or segregation with reference to the
30 selection, location, number, use or occupancy of tenants, lessees, subtenants,
31 sublessees, or vendees in the premises herein conveyed. The foregoing covenants
32 shall run with the land.”

33 (2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1)
34 shall not be construed to apply to housing for older persons, as defined in Section
35 12955.9 of the Government Code. With respect to familial status, nothing in
36 paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11,
37 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d)
38 of Section 51 and Section ~~1360~~ 4760 of the Civil Code and subdivisions (n), (o),
39 and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

40 (b)(1) In leases the following language shall appear -- “The lessee herein
41 covenants by and for himself or herself, his or her heirs, executors, administrators,

1 and assigns, and all persons claiming under or through him or her, and this lease is
2 made and accepted upon and subject to the following conditions:

3 That there shall be no discrimination against or segregation of any person or
4 group of persons, on account of any basis listed in subdivision (a) or (d) of Section
5 12955 of the Government Code, as those bases are defined in Sections 12926,
6 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955,
7 and Section 12955.2 of the Government Code, in the leasing, subleasing,
8 transferring, use, occupancy, tenure, or enjoyment of the premises herein leased
9 nor shall the lessee himself or herself, or any person claiming under or through
10 him or her, establish or permit any such practice or practices of discrimination or
11 segregation with reference to the selection, location, number, use, or occupancy, of
12 tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

13 (2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1)
14 shall not be construed to apply to housing for older persons, as defined in Section
15 12955.9 of the Government Code. With respect to familial status, nothing in
16 paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11,
17 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d)
18 of Section 51 and Section ~~1360~~ 4760 of the Civil Code and subdivisions (n), (o),
19 and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

20 (c) In contracts entered into by the agency relating to the sale, transfer, or
21 leasing of land or any interest therein acquired by the agency within any survey
22 area or redevelopment project the foregoing provisions in substantially the forms
23 set forth shall be included and the contracts shall further provide that the foregoing
24 provisions shall be binding upon and shall obligate the contracting party or parties
25 and any subcontracting party or parties, or other transferees under the instrument.

26 **Comment.** Section 33436 is amended to correct cross-references to former Civil Code Section
27 1360.

28 **Health & Safety Code § 33769 (amended). Discrimination prohibited**

29 SEC. _____. Section 33769 of the Health and Safety Code is amended to read:

30 33769. (a) An agency shall require that any residence that is constructed with
31 financing obtained under this chapter shall be open, upon sale or rental of any
32 portion thereof, to all regardless of any basis listed in subdivision (a) or (d) of
33 Section 12955 of the Government Code, as those bases are defined in Sections
34 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section
35 12955, and Section 12955.2 of the Government Code. The agency shall also
36 require that contractors and subcontractors engaged in residential construction
37 financed under this chapter shall provide equal opportunity for employment,
38 without discrimination as to any basis listed in subdivision (a) of Section 12940 of
39 the Government Code, as those bases are defined in Sections 12926 and 12926.1
40 of the Government Code, and except as otherwise provided in Section 12940 of
41 the Government Code. All contracts and subcontracts for residential construction
42 financed under this chapter shall be let without discrimination as to any basis

1 listed in subdivision (a) of Section 12940 of the Government Code, as those bases
2 are defined in Sections 12926 and 12926.1 of the Government Code and except as
3 otherwise provided in Section 12940 of the Government Code. It shall be the
4 policy of an agency financing residential construction under this chapter to
5 encourage participation by minority contractors, and the agency shall adopt rules
6 and regulations to implement this section.

7 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
8 (a) shall not be construed to apply to housing for older persons, as defined in
9 Section 12955.9 of the Government Code. With respect to familial status, nothing
10 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
11 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
12 Subdivision (d) of Section 51 and Section ~~1360~~ 4760 of the Civil Code and
13 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
14 apply to subdivision (a).

15 **Comment.** Section 33769 is amended to correct a cross-reference to former Civil Code Section
16 1360.

17 **Health & Safety Code § 35811 (amended). Consideration of ethnicity, religion, sex, marital**
18 **status, or national origin**

19 SEC. _____. Section 35811 of the Health and Safety Code is amended to read:

20 35811. (a) No financial institution shall discriminate in the availability of, or in
21 the provision of, financial assistance for the purpose of purchasing, constructing,
22 rehabilitating, improving, or refinancing housing accommodations due, in whole
23 or in part, to the consideration of any basis listed in subdivision (a) or (d) of
24 Section 12955 of the Government Code, as those bases are defined in Sections
25 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section
26 12955, and Section 12955.2 of the Government Code.

27 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
28 (a) shall not be construed to apply to housing for older persons, as defined in
29 Section 12955.9 of the Government Code. With respect to familial status, nothing
30 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
31 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
32 Subdivision (d) of Section 51 and Section ~~1360~~ 4760 of the Civil Code and
33 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
34 apply to subdivision (a).

35 **Comment.** Section 35811 is amended to correct a cross-reference to former Civil Code Section
36 1360.

37 **Health & Safety Code § 37630 (amended). Equal opportunity**

38 SEC. _____. Section 37630 of the Health and Safety Code is amended to read:

39 37630. (a) The local agency shall require that any property that is rehabilitated
40 with financing obtained under this part shall be open, upon sale or rental of any
41 portion thereof, to all regardless of any basis listed in subdivision (a) or (d) of

1 Section 12955 of the Government Code, as those bases are defined in Sections
2 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section
3 12955, and Section 12955.2 of the Government Code. The local agency shall also
4 require that contractors and subcontractors engaged in historical rehabilitation
5 financed under this part provide equal opportunity for employment, without
6 discrimination as to any basis listed in subdivision (a) of Section 12940 of the
7 Government Code, as those bases are defined in Sections 12926 and 12926.1 of
8 the Government Code, and except as otherwise provided in Section 12940 of the
9 Government Code. All contracts and subcontracts for historical rehabilitation
10 financed under this part shall be let without discrimination as to any basis listed in
11 subdivision (a) of Section 12940 of the Government Code, as those bases are
12 defined in Sections 12926 and 12926.1 of the Government Code, and except as
13 otherwise provided in Section 12940 of the Government Code.

14 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
15 (a) shall not be construed to apply to housing for older persons, as defined in
16 Section 12955.9 of the Government Code. With respect to familial status, nothing
17 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
18 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
19 Subdivision (d) of Section 51 and Section ~~1360~~ 4760 of the Civil Code and
20 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
21 apply to subdivision (a).

22 **Comment.** Section 37630 is amended to correct a cross-reference to former Civil Code Section
23 1360.

24 **Health & Safety Code § 37923 (amended). Equal employment opportunity**

25 SEC. _____. Section 37923 of the Health and Safety Code is amended to read:

26 37923. (a) The local agency shall require that any residence that is rehabilitated,
27 constructed, or acquired with financing obtained under this part shall be open,
28 upon sale or rental of any portion thereof, to all regardless of any basis listed in
29 subdivision (a) or (d) of Section 12955 of the Government Code, as those bases
30 are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of
31 subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.
32 The local agency shall also require that contractors and subcontractors engaged in
33 residential rehabilitation financed under this part provide equal opportunity for
34 employment, without discrimination as to any basis listed in subdivision (a) of
35 Section 12940 of the Government Code, as those bases are defined in Sections
36 12926 and 12926.1 of the Government Code, and except as otherwise provided in
37 Section 12940 of the Government Code. All contracts and subcontracts for
38 residential rehabilitation financed under this part shall be let without
39 discrimination as to any basis listed in subdivision (a) of Section 12940 of the
40 Government Code, as those bases are defined in Sections 12926 and 12926.1 of
41 the Government Code, and except as otherwise provided in Section 12940 of the
42 Government Code. It shall be the policy of the local agency financing residential

1 rehabilitation under this part to encourage participation by minority contractors,
2 and the local agency shall adopt rules and regulations to implement this section.

3 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
4 (a) shall not be construed to apply to housing for older persons, as defined in
5 Section 12955.9 of the Government Code. With respect to familial status, nothing
6 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
7 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
8 Subdivision (d) of Section 51 and Section ~~1360~~ 4760 of the Civil Code and
9 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
10 apply to subdivision (a).

11 **Comment.** Section 37923 is amended to correct a cross-reference to former Civil Code Section
12 1360.

13 **Health & Safety Code § 50955 (amended). Civil rights and equal employment opportunity**

14 SEC. _____. Section 50955 of the Health and Safety Code is amended to read:

15 50955. (a) The agency and every housing sponsor shall require that occupancy
16 of housing developments assisted under this part shall be open to all regardless of
17 any basis listed in subdivision (a) or (d) of Section 12955 of the Government
18 Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and
19 paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the
20 Government Code, that contractors and subcontractors engaged in the construction
21 of housing developments shall provide an equal opportunity for employment,
22 without discrimination as to any basis listed in subdivision (a) of Section 12940 of
23 the Government Code, as those bases are defined in Sections 12926 and 12926.1
24 of the Government Code, and except as otherwise provided in Section 12940 of
25 the Government Code, and that contractors and subcontractors shall submit and
26 receive approval of an affirmative action program prior to the commencement of
27 construction or rehabilitation. Affirmative action requirements respecting
28 apprenticeship shall be consistent with Chapter 4 (commencing with Section 3070)
29 of Division 3 of the Labor Code.

30 All contracts for the management, construction, or rehabilitation of housing
31 developments, and contracts let by housing sponsors, contractors, and
32 subcontractors in the performance of management, construction or rehabilitation,
33 shall be let without discrimination as to any basis listed in subdivision (a) of
34 Section 12940 of the Government Code, as those bases are defined in Sections
35 12926 and 12926.1 of the Government Code, except as otherwise provided in
36 Section 12940 of the Government Code, and pursuant to an affirmative action
37 program, which shall be at not less than the Federal Housing Administration
38 affirmative action standards unless the board makes a specific finding that the
39 particular requirement would be unworkable. The agency shall periodically review
40 implementation of affirmative action programs required by this section.

41 It shall be the policy of the agency and housing sponsors to encourage
42 participation with respect to all projects by minority developers, builders, and

entrepreneurs in all levels of construction, planning, financing, and management of housing developments. In areas of minority concentration the agency shall require significant participation of minorities in the sponsorship, construction, planning, financing, and management of housing developments. The agency shall (1) require that, to the greatest extent feasible, opportunities for training and employment arising in connection with the planning, construction, rehabilitation, and operation of housing developments financed pursuant to this part be given to persons of low income residing in the area of that housing, and (2) determine and implement means to secure the participation of small businesses in the performance of contracts for work on housing developments and to develop the capabilities of these small businesses to more efficiently and competently participate in the economic mainstream. In order to achieve this participation by small businesses, the agency may, among other things, waive retention requirements otherwise imposed on contractors or subcontractors by regulation of the agency and may authorize or make advance payments for work to be performed. The agency shall develop relevant selection criteria for the participation of small businesses to ensure that, to the greatest extent feasible, the participants possess the necessary nonfinancial capabilities. The agency may, with respect to these small businesses, waive bond requirements otherwise imposed upon contractors or subcontractors by regulation of the agency, but the agency shall in that case substantially reduce the risk through (1) a pooled-risk bonding program, (2) a bond program in cooperation with other federal or state agencies, or (3) development of a self-insured bonding program with adequate reserves.

The agency shall adopt rules and regulations to implement this section.

Prior to commitment of a mortgage loan, the agency shall require each housing sponsor, except with respect to mutual self-help housing, to submit an affirmative marketing program that meets standards set forth in regulations of the agency. The agency shall require ~~such a~~ each housing sponsor to conduct the affirmative marketing program so approved. Additionally, the agency shall supplement the efforts of individual housing sponsors by conducting affirmative marketing programs with respect to housing at the state level.

(b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section ~~1360~~ 4760 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (a).

Comment. Subdivision (a) of Section 50955 is amended to make a stylistic revision.

Subdivision (b) is amended to correct a cross-reference to former Civil Code Section 1360.

1 **Health & Safety Code § 51602 (amended). Nondiscrimination in occupancy of housing**

2 SEC. _____. Section 51602 of the Health and Safety Code is amended to read:

3 51602. (a) The agency shall require that occupancy of housing for which a loan
4 is insured pursuant to this part shall be open to all regardless of any basis listed in
5 subdivision (a) or (d) of Section 12955 of the Government Code, as those bases
6 are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of
7 subdivision (p) of Section 12955, and Section 12955.2 of the Government Code,
8 and that contractors and subcontractors engaged in the construction or
9 rehabilitation of housing funded by a loan insured pursuant to this part shall
10 provide an equal opportunity for employment without discrimination as to any
11 basis listed in subdivision (a) of Section 12940 of the Government Code, as those
12 bases are defined in Sections 12926 and 12926.1 of the Government Code, and
13 except as otherwise provided in Section 12940 of the Government Code.

14 (b) Notwithstanding subdivision (a), with respect to familial status, subdivision
15 (a) shall not be construed to apply to housing for older persons, as defined in
16 Section 12955.9 of the Government Code. With respect to familial status, nothing
17 in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,
18 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens.
19 Subdivision (d) of Section 51 and Section ~~1360~~ 4760 of the Civil Code and
20 subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall
21 apply to subdivision (a).

22 (c) A qualified developer shall certify compliance with this section and Section
23 50955 according to requirements specified by the pertinent criteria of the agency.

24 **Comment.** Section 51602 is amended to correct a cross-reference to former Civil Code Section
25 1360.

26 **Health & Safety Code § 116048 (amended). Public swimming pool in common interest**
27 **development**

28 SEC. _____. Section 116048 of the Health and Safety Code is amended to read:

29 116048. (a) On or after January 1, 1987, for public swimming pools in any
30 common interest development, as defined in Section ~~1351~~ 4100 of the Civil Code,
31 that consists of fewer than 25 separate interests, as defined in ~~subdivision (l) of~~
32 ~~Section 1351~~ 4185 of the Civil Code, the person operating each ~~such~~ pool open for
33 use shall be required to keep a record of the information required by subdivision
34 (a) of Section 65523 of Title 22 of the California Administrative Code, except that
35 the information shall be recorded at least two times per week and at intervals no
36 greater than four days apart.

37 (b) On or after January 1, 1987, any rule or regulation of the department that is
38 in conflict with subdivision (a) is invalid.

39 **Comment.** Section 116048 is amended to correct a cross-reference to former Civil Code
40 Section 1351(c), (l).

41 The section is also amended to make a stylistic revision.

INSURANCE CODE

1 **Ins. Code § 790.031 (amended). Application of Sections 790.034, 2071.1 and 10082.3**

2 SEC. _____. Section 790.031 of the Insurance Code is amended to read:

3 790.031. The requirements of subdivision (b) of Section 790.034, and Sections
4 2071.1 and 10082.3 shall apply only to policies of residential property insurance
5 as defined in Section 10087, policies and endorsements containing those
6 coverages prescribed in Chapter 8.5 (commencing with Section 10081) of Part 1
7 of Division 2, policies issued by the California Earthquake Authority pursuant to
8 Chapter 8.6 (commencing with Section 10089.5) of Part 1 of Division 2, policies
9 and endorsements that insure against property damage and are issued to common
10 interest developments or to associations managing common interest developments,
11 as those terms are defined in ~~Section 1351~~ Sections 4080 and 4100 of the Civil
12 Code, and to policies issued pursuant to Section 120 that insure against property
13 damage to residential units or contents thereof owned by one or more persons
14 located in this state.

15 **Comment.** Section 790.031 is amended to correct a cross-reference to former Civil Code
16 Section 1351(a), (c).

REVENUE AND TAXATION CODE

17 **Rev. & Tax. Code § 2188.6 (amended). Separate assessment of property divided into**
18 **condominiums**

19 SEC. _____. Section 2188.6 of the Revenue and Taxation Code is amended to
20 read:

21 2188.6. (a) Unless a request for exemption has been recorded pursuant to
22 subdivision (d), prior to the creation of a condominium as defined in Section 783
23 of the Civil Code, the county assessor may separately assess each individual unit
24 which is shown on the condominium plan of a proposed condominium project
25 when all of the following documents have been recorded as required by law:

26 (1) A subdivision final map or parcel map, as described in Sections 66434 and
27 66445, respectively, of the Government Code.

28 (2) A condominium plan, as defined in ~~subdivision (e) of Section 1351~~ 4120 of
29 the Civil Code.

30 (3) A declaration, as defined in ~~subdivision (h) of Section 1351~~ 4135 of the Civil
31 Code.

32 (b) The tax due on each individual unit shall constitute a lien solely on that unit.

33 (c) The lien created pursuant to this section shall be a lien on an undivided
34 interest in a portion of real property coupled with a separate interest in space
35 called a unit as described in ~~subdivision (f) of Section 1351~~ 4125 of the Civil
36 Code.

1 (d) The record owner of the real property may record with the condominium
2 plan a request that the real property be exempt from separate assessment pursuant
3 to this section. If a request for exemption is recorded, separate assessment of a
4 condominium unit shall be made only in accordance with Section 2188.3.

5 (e) This section shall become operative on January 1, 1990, and shall apply to
6 condominium projects for which a condominium plan is recorded after that date.

7 **Comment.** Section 2188.6 is amended to correct cross-references to former Civil Code Section
8 1351(e), (f), (h).

VEHICLE CODE

9 **Veh. Code § 21107.7 (amended). Private road not open to public use**

10 SEC. _____. Section 21107.7 of the Vehicle Code is amended to read:

11 21107.7. (a) Any city or county may, by ordinance or resolution, find and
12 declare that there are privately owned and maintained roads as described in the
13 ordinance or resolution within the city or county that are not generally held open
14 for use of the public for purposes of vehicular travel but, by reason of their
15 proximity to or connection with highways, the interests of any residents residing
16 along the roads and the motoring public will best be served by application of the
17 provisions of this code to those roads. No ordinance or resolution shall be enacted
18 unless there is first filed with the city or county a petition requesting it by a
19 majority of the owners of any privately owned and maintained road, or by at least
20 a majority of the board of directors of a common interest development, as defined
21 by Section ~~4354~~ 4100 of the Civil Code, that is responsible for maintaining the
22 road, and without a public hearing thereon and 10 days' prior written notice to all
23 owners of the road or all of the owners in the development. Upon enactment of the
24 ordinance or resolution, the provisions of this code shall apply to the privately
25 owned and maintained road if appropriate signs are erected at the entrance to the
26 road of the size, shape, and color as to be readily legible during daylight hours
27 from a distance of 100 feet, to the effect that the road is subject to the provisions
28 of this code. The city or county may impose reasonable conditions and may
29 authorize the owners, or board of directors of the common interest development, to
30 erect traffic signs, signals, markings, and devices which conform to the uniform
31 standards and specifications adopted by the Department of Transportation.

32 (b) The department shall not be required to provide patrol or enforce any
33 provisions of this code on any privately owned and maintained road subjected to
34 the provisions of this code under this section, except those provisions applicable to
35 private property other than by action under this section.

36 (c) As used in this section, "privately owned and maintained roads" includes
37 roads owned and maintained by a city, county or district that are not dedicated to
38 use by the public or are not generally held open for use of the public for purposes
39 of vehicular travel.

1 **Comment.** Section 21107.7 is amended to correct a cross-reference to former Civil Code
2 Section 1351(c).

3 **Veh. Code § 22651 (amended). Circumstances in which removal of vehicle is permitted**

4 SEC. _____. Section 22651 of the Vehicle Code is amended to read:

5 22651. A peace officer, as defined in Chapter 4.5 (commencing with Section
6 830) of Title 3 of Part 2 of the Penal Code, or a regularly employed and salaried
7 employee, who is engaged in directing traffic or enforcing parking laws and
8 regulations, of a city, county, or jurisdiction of a state agency in which a vehicle is
9 located, may remove a vehicle located within the territorial limits in which the
10 officer or employee may act, under the following circumstances:

11 (a) When a vehicle is left unattended upon a bridge, viaduct, or causeway or in a
12 tube or tunnel where the vehicle constitutes an obstruction to traffic.

13 (b) When a vehicle is parked or left standing upon a highway in a position so as
14 to obstruct the normal movement of traffic or in a condition so as to create a
15 hazard to other traffic upon the highway.

16 (c) When a vehicle is found upon a highway or public land and a report has
17 previously been made that the vehicle is stolen or a complaint has been filed and a
18 warrant thereon is issued charging that the vehicle was embezzled.

19 (d) When a vehicle is illegally parked so as to block the entrance to a private
20 driveway and it is impractical to move the vehicle from in front of the driveway to
21 another point on the highway.

22 (e) When a vehicle is illegally parked so as to prevent access by firefighting
23 equipment to a fire hydrant and it is impracticable to move the vehicle from in
24 front of the fire hydrant to another point on the highway.

25 (f) When a vehicle, except highway maintenance or construction equipment, is
26 stopped, parked, or left standing for more than four hours upon the right-of-way of
27 a freeway that has full control of access and no crossings at grade and the driver, if
28 present, cannot move the vehicle under its own power.

29 (g) When the person in charge of a vehicle upon a highway or public land is, by
30 reason of physical injuries or illness, incapacitated to an extent so as to be unable
31 to provide for its custody or removal.

32 (h)(1) When an officer arrests a person driving or in control of a vehicle for an
33 alleged offense and the officer is, by this code or other law, required or permitted
34 to take, and does take, the person into custody.

35 (2) When an officer serves a notice of an order of suspension or revocation
36 pursuant to Section 13388 or 13389.

37 (i)(1) When a vehicle, other than a rented vehicle, is found upon a highway or
38 public land, or is removed pursuant to this code, and it is known that the vehicle
39 has been issued five or more notices of parking violations to which the owner or
40 person in control of the vehicle has not responded within 21 calendar days of
41 notice of citation issuance or citation issuance or 14 calendar days of the mailing
42 of a notice of delinquent parking violation to the agency responsible for processing

1 notices of parking violations, or the registered owner of the vehicle is known to
2 have been issued five or more notices for failure to pay or failure to appear in
3 court for traffic violations for which a certificate has not been issued by the
4 magistrate or clerk of the court hearing the case showing that the case has been
5 adjudicated or concerning which the registered owner's record has not been
6 cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17,
7 the vehicle may be impounded until that person furnishes to the impounding law
8 enforcement agency all of the following:

9 (A) Evidence of his or her identity.

10 (B) An address within this state at which he or she can be located.

11 (C) Satisfactory evidence that all parking penalties due for the vehicle and all
12 other vehicles registered to the registered owner of the impounded vehicle, and all
13 traffic violations of the registered owner, have been cleared.

14 (2) The requirements in subparagraph (C) of paragraph (1) shall be fully
15 enforced by the impounding law enforcement agency on and after the time that the
16 Department of Motor Vehicles is able to provide access to the necessary records.

17 (3) A notice of parking violation issued for an unlawfully parked vehicle shall
18 be accompanied by a warning that repeated violations may result in the
19 impounding of the vehicle. In lieu of furnishing satisfactory evidence that the full
20 amount of parking penalties or bail has been deposited, that person may demand to
21 be taken without unnecessary delay before a magistrate, for traffic offenses, or a
22 hearing examiner, for parking offenses, within the county in which the offenses
23 charged are alleged to have been committed and who has jurisdiction of the
24 offenses and is nearest or most accessible with reference to the place where the
25 vehicle is impounded. Evidence of current registration shall be produced after a
26 vehicle has been impounded, or, at the discretion of the impounding law
27 enforcement agency, a notice to appear for violation of subdivision (a) of Section
28 4000 shall be issued to that person.

29 (4) A vehicle shall be released to the legal owner, as defined in Section 370, if
30 the legal owner does all of the following:

31 (A) Pays the cost of towing and storing the vehicle.

32 (B) Submits evidence of payment of fees as provided in Section 9561.

33 (C) Completes an affidavit in a form acceptable to the impounding law
34 enforcement agency stating that the vehicle was not in possession of the legal
35 owner at the time of occurrence of the offenses relating to standing or parking. A
36 vehicle released to a legal owner under this subdivision is a repossessed vehicle
37 for purposes of disposition or sale. The impounding agency shall have a lien on
38 any surplus that remains upon sale of the vehicle to which the registered owner is
39 or may be entitled, as security for the full amount of the parking penalties for all
40 notices of parking violations issued for the vehicle and for all local administrative
41 charges imposed pursuant to Section 22850.5. The legal owner shall promptly
42 remit to, and deposit with, the agency responsible for processing notices of
43 parking violations from that surplus, on receipt of that surplus, the full amount of

1 the parking penalties for all notices of parking violations issued for the vehicle and
2 for all local administrative charges imposed pursuant to Section 22850.5.

3 (5) The impounding agency that has a lien on the surplus that remains upon the
4 sale of a vehicle to which a registered owner is entitled pursuant to paragraph (4)
5 has a deficiency claim against the registered owner for the full amount of the
6 parking penalties for all notices of parking violations issued for the vehicle and for
7 all local administrative charges imposed pursuant to Section 22850.5, less the
8 amount received from the sale of the vehicle.

9 (j) When a vehicle is found illegally parked and there are no license plates or
10 other evidence of registration displayed, the vehicle may be impounded until the
11 owner or person in control of the vehicle furnishes the impounding law
12 enforcement agency evidence of his or her identity and an address within this state
13 at which he or she can be located.

14 (k) When a vehicle is parked or left standing upon a highway for 72 or more
15 consecutive hours in violation of a local ordinance authorizing removal.

16 (l) When a vehicle is illegally parked on a highway in violation of a local
17 ordinance forbidding standing or parking and the use of a highway, or a portion
18 thereof, is necessary for the cleaning, repair, or construction of the highway, or for
19 the installation of underground utilities, and signs giving notice that the vehicle
20 may be removed are erected or placed at least 24 hours prior to the removal by a
21 local authority pursuant to the ordinance.

22 (m) When the use of the highway, or a portion of the highway, is authorized by a
23 local authority for a purpose other than the normal flow of traffic or for the
24 movement of equipment, articles, or structures of unusual size, and the parking of
25 a vehicle would prohibit or interfere with that use or movement, and signs giving
26 notice that the vehicle may be removed are erected or placed at least 24 hours
27 prior to the removal by a local authority pursuant to the ordinance.

28 (n) Whenever a vehicle is parked or left standing where local authorities, by
29 resolution or ordinance, have prohibited parking and have authorized the removal
30 of vehicles. Except as provided in subdivision (v), a vehicle shall not be removed
31 unless signs are posted giving notice of the removal.

32 (o)(1) When a vehicle is found or operated upon a highway, public land, or an
33 offstreet parking facility under the following circumstances:

34 (A) With a registration expiration date in excess of six months before the date it
35 is found or operated on the highway, public lands, or the offstreet parking facility.

36 (B) Displaying in, or upon, the vehicle, a registration card, identification card,
37 temporary receipt, license plate, special plate, registration sticker, device issued
38 pursuant to Section 4853, or permit that was not issued for that vehicle, or is not
39 otherwise lawfully used on that vehicle under this code.

40 (C) Displaying in, or upon, the vehicle, an altered, forged, counterfeit, or
41 falsified registration card, identification card, temporary receipt, license plate,
42 special plate, registration sticker, device issued pursuant to Section 4853, or
43 permit.

1 (2) When a vehicle described in paragraph (1) is occupied, only a peace officer,
2 as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of
3 the Penal Code, may remove the vehicle.

4 (3) For the purposes of this subdivision, the vehicle shall be released to the
5 owner or person in control of the vehicle only after the owner or person furnishes
6 the storing law enforcement agency with proof of current registration and a
7 currently valid driver's license to operate the vehicle.

8 (4) As used in this subdivision, "offstreet parking facility" means an offstreet
9 facility held open for use by the public for parking vehicles and includes a publicly
10 owned facility for offstreet parking, and a privately owned facility for offstreet
11 parking if a fee is not charged for the privilege to park and it is held open for the
12 common public use of retail customers.

13 (p) When the peace officer issues the driver of a vehicle a notice to appear for a
14 violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5,
15 or 14604 and the vehicle is not impounded pursuant to Section 22655.5. A vehicle
16 so removed from the highway or public land, or from private property after having
17 been on a highway or public land, shall not be released to the registered owner or
18 his or her agent, except upon presentation of the registered owner's or his or her
19 agent's currently valid driver's license to operate the vehicle and proof of current
20 vehicle registration, or upon order of a court.

21 (q) When a vehicle is parked for more than 24 hours on a portion of highway
22 that is located within the boundaries of a common interest development, as defined
23 in ~~subdivision (c) of Section 1351~~ Section 4100 of the Civil Code, and signs, as required
24 by paragraph (1) of subdivision (a) of Section 22658 of this code, have been
25 posted on that portion of highway providing notice to drivers that vehicles parked
26 thereon for more than 24 hours will be removed at the owner's expense, pursuant
27 to a resolution or ordinance adopted by the local authority.

28 (r) When a vehicle is illegally parked and blocks the movement of a legally
29 parked vehicle.

30 (s)(1) When a vehicle, except highway maintenance or construction equipment,
31 an authorized emergency vehicle, or a vehicle that is properly permitted or
32 otherwise authorized by the Department of Transportation, is stopped, parked, or
33 left standing for more than eight hours within a roadside rest area or viewpoint.

34 (2) Notwithstanding paragraph (1), when a commercial motor vehicle, as
35 defined in paragraph (1) of subdivision (b) of Section 15210, is stopped, parked, or
36 left standing for more than 10 hours within a roadside rest area or viewpoint.

37 (3) For purposes of this subdivision, a roadside rest area or viewpoint is a
38 publicly maintained vehicle parking area, adjacent to a highway, utilized for the
39 convenient, safe stopping of a vehicle to enable motorists to rest or to view the
40 scenery. If two or more roadside rest areas are located on opposite sides of the
41 highway, or upon the center divider, within seven miles of each other, then that
42 combination of rest areas is considered to be the same rest area.

1 (t) When a peace officer issues a notice to appear for a violation of Section
2 25279.

3 (u) When a peace officer issues a citation for a violation of Section 11700 and
4 the vehicle is being offered for sale.

5 (v)(1) When a vehicle is a mobile billboard advertising display, as defined in
6 Section 395.5, and is parked or left standing in violation of a local resolution or
7 ordinance adopted pursuant to subdivision (m) of Section 21100, if the registered
8 owner of the vehicle was previously issued a warning citation for the same
9 offense, pursuant to paragraph (2).

10 (2) Notwithstanding subdivision (a) of Section 22507, a city or county, in lieu of
11 posting signs noticing a local ordinance prohibiting mobile billboard advertising
12 displays adopted pursuant to subdivision (m) of Section 21100, may provide
13 notice by issuing a warning citation advising the registered owner of the vehicle
14 that he or she may be subject to penalties upon a subsequent violation of the
15 ordinance that may include the removal of the vehicle as provided in paragraph
16 (1). A city or county is not required to provide further notice for a subsequent
17 violation prior to the enforcement of penalties for a violation of the ordinance.

18 **Comment.** Subdivision (q) of Section 22651 is amended to correct a cross-reference to former
19 Civil Code Section 1351(c).

20 **Veh. Code § 22651.05 (amended). Removal of vehicle by trained volunteer in specified**
21 **circumstances**

22 SEC. _____. Section 22651.05 of the Vehicle Code is amended to read:

23 22651.05. (a) A trained volunteer of a state or local law enforcement agency,
24 who is engaged in directing traffic or enforcing parking laws and regulations, of a
25 city, county, or jurisdiction of a state agency in which a vehicle is located, may
26 remove or authorize the removal of a vehicle located within the territorial limits in
27 which an officer or employee of that agency may act, under any of the following
28 circumstances:

29 (1) When a vehicle is parked or left standing upon a highway for 72 or more
30 consecutive hours in violation of a local ordinance authorizing the removal.

31 (2) When a vehicle is illegally parked or left standing on a highway in violation
32 of a local ordinance forbidding standing or parking and the use of a highway, or a
33 portion thereof, is necessary for the cleaning, repair, or construction of the
34 highway, or for the installation of underground utilities, and signs giving notice
35 that the vehicle may be removed are erected or placed at least 24 hours prior to the
36 removal by local authorities pursuant to the ordinance.

37 (3) Wherever the use of the highway, or a portion thereof, is authorized by local
38 authorities for a purpose other than the normal flow of traffic or for the movement
39 of equipment, articles, or structures of unusual size, and the parking of a vehicle
40 would prohibit or interfere with that use or movement, and signs giving notice that
41 the vehicle may be removed are erected or placed at least 24 hours prior to the
42 removal by local authorities pursuant to the ordinance.

1 (4) Whenever a vehicle is parked or left standing where local authorities, by
2 resolution or ordinance, have prohibited parking and have authorized the removal
3 of vehicles. A vehicle may not be removed unless signs are posted giving notice of
4 the removal.

5 (5) Whenever a vehicle is parked for more than 24 hours on a portion of
6 highway that is located within the boundaries of a common interest development,
7 as defined in ~~subdivision (c) of Section 1351~~ 4100 of the Civil Code, and signs, as
8 required by Section 22658.2, have been posted on that portion of highway
9 providing notice to drivers that vehicles parked thereon for more than 24 hours
10 will be removed at the owner's expense, pursuant to a resolution or ordinance
11 adopted by the local authority.

12 (b) The provisions of this chapter that apply to a vehicle removed pursuant to
13 Section 22651 apply to a vehicle removed pursuant to subdivision (a).

14 (c) For purposes of subdivision (a), a "trained volunteer" is a person who, of his
15 or her own free will, provides services, without any financial gain, to a local or
16 state law enforcement agency, and who is duly trained and certified to remove a
17 vehicle by a local or state law enforcement agency.

18 **Comment.** Section 22651.05 is amended to correct a cross-reference to former Civil Code
19 Section 1351(c).

20 **Veh. Code § 22658 (amended). Removal of vehicle from private property by property owner**

21 SEC. _____. Section 22658 of the Vehicle Code is amended to read:

22 22658. (a) The owner or person in lawful possession of private property,
23 including an association of a common interest development as defined in ~~Section~~
24 ~~1351~~ Sections 4080 and 4100 of the Civil Code, may cause the removal of a
25 vehicle parked on the property to a storage facility that meets the requirements of
26 subdivision (n) under any of the following circumstances:

27 (1) There is displayed, in plain view at all entrances to the property, a sign not
28 less than 17 inches by 22 inches in size, with lettering not less than one inch in
29 height, prohibiting public parking and indicating that vehicles will be removed at
30 the owner's expense, and containing the telephone number of the local traffic law
31 enforcement agency and the name and telephone number of each towing company
32 that is a party to a written general towing authorization agreement with the owner
33 or person in lawful possession of the property. The sign may also indicate that a
34 citation may also be issued for the violation.

35 (2) The vehicle has been issued a notice of parking violation, and 96 hours have
36 elapsed since the issuance of that notice.

37 (3) The vehicle is on private property and lacks an engine, transmission, wheels,
38 tires, doors, windshield, or any other major part or equipment necessary to operate
39 safely on the highways, the owner or person in lawful possession of the private
40 property has notified the local traffic law enforcement agency, and 24 hours have
41 elapsed since that notification.

1 (4) The lot or parcel upon which the vehicle is parked is improved with a single-
2 family dwelling.

3 (b) The tow truck operator removing the vehicle, if the operator knows or is able
4 to ascertain from the property owner, person in lawful possession of the property,
5 or the registration records of the Department of Motor Vehicles the name and
6 address of the registered and legal owner of the vehicle, shall immediately give, or
7 cause to be given, notice in writing to the registered and legal owner of the fact of
8 the removal, the grounds for the removal, and indicate the place to which the
9 vehicle has been removed. If the vehicle is stored in a storage facility, a copy of
10 the notice shall be given to the proprietor of the storage facility. The notice
11 provided for in this section shall include the amount of mileage on the vehicle at
12 the time of removal and the time of the removal from the property. If the tow truck
13 operator does not know and is not able to ascertain the name of the owner or for
14 any other reason is unable to give the notice to the owner as provided in this
15 section, the tow truck operator shall comply with the requirements of subdivision
16 (c) of Section 22853 relating to notice in the same manner as applicable to an
17 officer removing a vehicle from private property.

18 (c) This section does not limit or affect any right or remedy that the owner or
19 person in lawful possession of private property may have by virtue of other
20 provisions of law authorizing the removal of a vehicle parked upon private
21 property.

22 (d) The owner of a vehicle removed from private property pursuant to
23 subdivision (a) may recover for any damage to the vehicle resulting from any
24 intentional or negligent act of a person causing the removal of, or removing, the
25 vehicle.

26 (e)(1) An owner or person in lawful possession of private property, or an
27 association of a common interest development, causing the removal of a vehicle
28 parked on that property is liable for double the storage or towing charges
29 whenever there has been a failure to comply with paragraph (1), (2), or (3) of
30 subdivision (a) or to state the grounds for the removal of the vehicle if requested
31 by the legal or registered owner of the vehicle as required by subdivision (f).

32 (2) A property owner or owner's agent or lessee who causes the removal of a
33 vehicle parked on that property pursuant to the exemption set forth in
34 subparagraph (A) of paragraph (1) of subdivision (l) and fails to comply with that
35 subdivision is guilty of an infraction, punishable by a fine of one thousand dollars
36 (\$1,000).

37 (f) An owner or person in lawful possession of private property, or an
38 association of a common interest development, causing the removal of a vehicle
39 parked on that property shall notify by telephone or, if impractical, by the most
40 expeditious means available, the local traffic law enforcement agency within one
41 hour after authorizing the tow. An owner or person in lawful possession of private
42 property, an association of a common interest development, causing the removal
43 of a vehicle parked on that property, or the tow truck operator who removes the

1 vehicle, shall state the grounds for the removal of the vehicle if requested by the
2 legal or registered owner of that vehicle. A towing company that removes a
3 vehicle from private property in compliance with subdivision (I) is not responsible
4 in a situation relating to the validity of the removal. A towing company that
5 removes the vehicle under this section shall be responsible for the following:

6 (1) Damage to the vehicle in the transit and subsequent storage of the vehicle.

7 (2) The removal of a vehicle other than the vehicle specified by the owner or
8 other person in lawful possession of the private property.

9 (g)(1)(A) Possession of a vehicle under this section shall be deemed to arise
10 when a vehicle is removed from private property and is in transit.

11 (B) Upon the request of the owner of the vehicle or that owner's agent, the
12 towing company or its driver shall immediately and unconditionally release a
13 vehicle that is not yet removed from the private property and in transit.

14 (C) A person failing to comply with subparagraph (B) is guilty of a
15 misdemeanor.

16 (2) If a vehicle is released to a person in compliance with subparagraph (B) of
17 paragraph (1), the vehicle owner or authorized agent shall immediately move that
18 vehicle to a lawful location.

19 (h) A towing company may impose a charge of not more than one-half of the
20 regular towing charge for the towing of a vehicle at the request of the owner, the
21 owner's agent, or the person in lawful possession of the private property pursuant
22 to this section if the owner of the vehicle or the vehicle owner's agent returns to
23 the vehicle after the vehicle is coupled to the tow truck by means of a regular
24 hitch, coupling device, drawbar, portable dolly, or is lifted off the ground by
25 means of a conventional trailer, and before it is removed from the private property.
26 The regular towing charge may only be imposed after the vehicle has been
27 removed from the property and is in transit.

28 (i)(1)(A) A charge for towing or storage, or both, of a vehicle under this section
29 is excessive if the charge exceeds the greater of the following:

30 (i) That which would have been charged for that towing or storage, or both,
31 made at the request of a law enforcement agency under an agreement between a
32 towing company and the law enforcement agency that exercises primary
33 jurisdiction in the city in which is located the private property from which the
34 vehicle was, or was attempted to be, removed, or if the private property is not
35 located within a city, then the law enforcement agency that exercises primary
36 jurisdiction in the county in which the private property is located.

37 (ii) That which would have been charged for that towing or storage, or both,
38 under the rate approved for that towing operator by the California Highway Patrol
39 for the jurisdiction in which the private property is located and from which the
40 vehicle was, or was attempted to be, removed.

41 (B) A towing operator shall make available for inspection and copying his or her
42 rate approved by the California Highway Patrol, if any, within 24 hours of a

1 request without a warrant to law enforcement, the Attorney General, district
2 attorney, or city attorney.

3 (2) If a vehicle is released within 24 hours from the time the vehicle is brought
4 into the storage facility, regardless of the calendar date, the storage charge shall be
5 for only one day. Not more than one day's storage charge may be required for a
6 vehicle released the same day that it is stored.

7 (3) If a request to release a vehicle is made and the appropriate fees are tendered
8 and documentation establishing that the person requesting release is entitled to
9 possession of the vehicle, or is the owner's insurance representative, is presented
10 within the initial 24 hours of storage, and the storage facility fails to comply with
11 the request to release the vehicle or is not open for business during normal
12 business hours, then only one day's storage charge may be required to be paid
13 until after the first business day. A business day is any day in which the lienholder
14 is open for business to the public for at least eight hours. If a request is made more
15 than 24 hours after the vehicle is placed in storage, charges may be imposed on a
16 full calendar day basis for each day, or part thereof, that the vehicle is in storage.

17 (j)(1) A person who charges a vehicle owner a towing, service, or storage charge
18 at an excessive rate, as described in subdivision (h) or (i), is civilly liable to the
19 vehicle owner for four times the amount charged.

20 (2) A person who knowingly charges a vehicle owner a towing, service, or
21 storage charge at an excessive rate, as described in subdivision (h) or (i), or who
22 fails to make available his or her rate as required in subparagraph (B) of paragraph
23 (1) of subdivision (i), is guilty of a misdemeanor, punishable by a fine of not more
24 than two thousand five hundred dollars (\$2,500), or by imprisonment in the county
25 jail for not more than three months, or by both that fine and imprisonment.

26 (k)(1) A person operating or in charge of a storage facility where vehicles are
27 stored pursuant to this section shall accept a valid bank credit card or cash for
28 payment of towing and storage by a registered owner, the legal owner, or the
29 owner's agent claiming the vehicle. A credit card shall be in the name of the
30 person presenting the card. "Credit card" means "credit card" as defined in
31 subdivision (a) of Section 1747.02 of the Civil Code, except, for the purposes of
32 this section, credit card does not include a credit card issued by a retail seller.

33 (2) A person described in paragraph (1) shall conspicuously display, in that
34 portion of the storage facility office where business is conducted with the public, a
35 notice advising that all valid credit cards and cash are acceptable means of
36 payment.

37 (3) A person operating or in charge of a storage facility who refuses to accept a
38 valid credit card or who fails to post the required notice under paragraph (2) is
39 guilty of a misdemeanor, punishable by a fine of not more than two thousand five
40 hundred dollars (\$2,500), or by imprisonment in the county jail for not more than
41 three months, or by both that fine and imprisonment.

1 (4) A person described in paragraph (1) who violates paragraph (1) or (2) is
2 civilly liable to the registered owner of the vehicle or the person who tendered the
3 fees for four times the amount of the towing and storage charges.

4 (5) A person operating or in charge of the storage facility shall have sufficient
5 moneys on the premises of the primary storage facility during normal business
6 hours to accommodate, and make change in, a reasonable monetary transaction.

7 (6) Credit charges for towing and storage services shall comply with Section
8 1748.1 of the Civil Code. Law enforcement agencies may include the costs of
9 providing for payment by credit when making agreements with towing companies
10 as described in subdivision (i).

11 (l)(1)(A) A towing company shall not remove or commence the removal of a
12 vehicle from private property without first obtaining the written authorization from
13 the property owner or lessee, including an association of a common interest
14 development, or an employee or agent thereof, who shall be present at the time of
15 removal and verify the alleged violation, except that presence and verification is
16 not required if the person authorizing the tow is the property owner, or the owner's
17 agent who is not a tow operator, of a residential rental property of 15 or fewer
18 units that does not have an onsite owner, owner's agent or employee, and the
19 tenant has verified the violation, requested the tow from that tenant's assigned
20 parking space, and provided a signed request or electronic mail, or has called and
21 provides a signed request or electronic mail within 24 hours, to the property owner
22 or owner's agent, which the owner or agent shall provide to the towing company
23 within 48 hours of authorizing the tow. The signed request or electronic mail shall
24 contain the name and address of the tenant, and the date and time the tenant
25 requested the tow. A towing company shall obtain, within 48 hours of receiving
26 the written authorization to tow, a copy of a tenant request required pursuant to
27 this subparagraph. For the purpose of this subparagraph, a person providing the
28 written authorization who is required to be present on the private property at the
29 time of the tow does not have to be physically present at the specified location of
30 where the vehicle to be removed is located on the private property.

31 (B) The written authorization under subparagraph (A) shall include all of the
32 following:

33 (i) The make, model, vehicle identification number, and license plate number of
34 the removed vehicle.

35 (ii) The name, signature, job title, residential or business address and working
36 telephone number of the person, described in subparagraph (A), authorizing the
37 removal of the vehicle.

38 (iii) The grounds for the removal of the vehicle.

39 (iv) The time when the vehicle was first observed parked at the private property.

40 (v) The time that authorization to tow the vehicle was given.

41 (C)(i) When the vehicle owner or his or her agent claims the vehicle, the towing
42 company prior to payment of a towing or storage charge shall provide a photocopy
43 of the written authorization to the vehicle owner or the agent.

1 (ii) If the vehicle was towed from a residential property, the towing company
2 shall redact the information specified in clause (ii) of subparagraph (B) in the
3 photocopy of the written authorization provided to the vehicle owner or the agent
4 pursuant to clause (i).

5 (iii) The towing company shall also provide to the vehicle owner or the agent a
6 separate notice that provides the telephone number of the appropriate local law
7 enforcement or prosecuting agency by stating “If you believe that you have been
8 wrongfully towed, please contact the local law enforcement or prosecuting agency
9 at [insert appropriate telephone number].” The notice shall be in English and in the
10 most populous language, other than English, that is spoken in the jurisdiction.

11 (D) A towing company shall not remove or commence the removal of a vehicle
12 from private property described in subdivision (a) of Section 22953 unless the
13 towing company has made a good faith inquiry to determine that the owner or the
14 property owner’s agent complied with Section 22953.

15 (E)(i) General authorization to remove or commence removal of a vehicle at the
16 towing company’s discretion shall not be delegated to a towing company or its
17 affiliates except in the case of a vehicle unlawfully parked within 15 feet of a fire
18 hydrant or in a fire lane, or in a manner which interferes with an entrance to, or
19 exit from, the private property.

20 (ii) In those cases in which general authorization is granted to a towing company
21 or its affiliate to undertake the removal or commence the removal of a vehicle that
22 is unlawfully parked within 15 feet of a fire hydrant or in a fire lane, or that
23 interferes with an entrance to, or exit from, private property, the towing company
24 and the property owner, or owner’s agent, or person in lawful possession of the
25 private property shall have a written agreement granting that general authorization.

26 (2) If a towing company removes a vehicle under a general authorization
27 described in subparagraph (E) of paragraph (1) and that vehicle is unlawfully
28 parked within 15 feet of a fire hydrant or in a fire lane, or in a manner that
29 interferes with an entrance to, or exit from, the private property, the towing
30 company shall take, prior to the removal of that vehicle, a photograph of the
31 vehicle that clearly indicates that parking violation. Prior to accepting payment,
32 the towing company shall keep one copy of the photograph taken pursuant to this
33 paragraph, and shall present that photograph and provide, without charge, a
34 photocopy to the owner or an agent of the owner, when that person claims the
35 vehicle.

36 (3) A towing company shall maintain the original written authorization, or the
37 general authorization described in subparagraph (E) of paragraph (1) and the
38 photograph of the violation, required pursuant to this section, and any written
39 requests from a tenant to the property owner or owner’s agent required by
40 subparagraph (A) of paragraph (1), for a period of three years and shall make them
41 available for inspection and copying within 24 hours of a request without a
42 warrant to law enforcement, the Attorney General, district attorney, or city
43 attorney.

1 (4) A person who violates this subdivision is guilty of a misdemeanor,
2 punishable by a fine of not more than two thousand five hundred dollars (\$2,500),
3 or by imprisonment in the county jail for not more than three months, or by both
4 that fine and imprisonment.

5 (5) A person who violates this subdivision is civilly liable to the owner of the
6 vehicle or his or her agent for four times the amount of the towing and storage
7 charges.

8 (m)(1) A towing company that removes a vehicle from private property under
9 this section shall notify the local law enforcement agency of that tow after the
10 vehicle is removed from the private property and is in transit.

11 (2) A towing company is guilty of a misdemeanor if the towing company fails to
12 provide the notification required under paragraph (1) within 60 minutes after the
13 vehicle is removed from the private property and is in transit or 15 minutes after
14 arriving at the storage facility, whichever time is less.

15 (3) A towing company that does not provide the notification under paragraph (1)
16 within 30 minutes after the vehicle is removed from the private property and is in
17 transit is civilly liable to the registered owner of the vehicle, or the person who
18 tenders the fees, for three times the amount of the towing and storage charges.

19 (4) If notification is impracticable, the times for notification, as required
20 pursuant to paragraphs (2) and (3), shall be tolled for the time period that
21 notification is impracticable. This paragraph is an affirmative defense.

22 (n) A vehicle removed from private property pursuant to this section shall be
23 stored in a facility that meets all of the following requirements:

24 (1)(A) Is located within a 10-mile radius of the property from where the vehicle
25 was removed.

26 (B) The 10-mile radius requirement of subparagraph (A) does not apply if a
27 towing company has prior general written approval from the law enforcement
28 agency that exercises primary jurisdiction in the city in which is located the
29 private property from which the vehicle was removed, or if the private property is
30 not located within a city, then the law enforcement agency that exercises primary
31 jurisdiction in the county in which is located the private property.

32 (2)(A) Remains open during normal business hours and releases vehicles after
33 normal business hours.

34 (B) A gate fee may be charged for releasing a vehicle after normal business
35 hours, weekends, and state holidays. However, the maximum hourly charge for
36 releasing a vehicle after normal business hours shall be one-half of the hourly tow
37 rate charged for initially towing the vehicle, or less.

38 (C) Notwithstanding any other provision of law and for purposes of this
39 paragraph, "normal business hours" are Monday to Friday, inclusive, from 8 a.m.
40 to 5 p.m., inclusive, except state holidays.

41 (3) Has a public pay telephone in the office area that is open and accessible to
42 the public.

1 (o)(1) It is the intent of the Legislature in the adoption of subdivision (k) to
2 assist vehicle owners or their agents by, among other things, allowing payment by
3 credit cards for towing and storage services, thereby expediting the recovery of
4 towed vehicles and concurrently promoting the safety and welfare of the public.

5 (2) It is the intent of the Legislature in the adoption of subdivision (l) to further
6 the safety of the general public by ensuring that a private property owner or lessee
7 has provided his or her authorization for the removal of a vehicle from his or her
8 property, thereby promoting the safety of those persons involved in ordering the
9 removal of the vehicle as well as those persons removing, towing, and storing the
10 vehicle.

11 (3) It is the intent of the Legislature in the adoption of subdivision (g) to
12 promote the safety of the general public by requiring towing companies to
13 unconditionally release a vehicle that is not lawfully in their possession, thereby
14 avoiding the likelihood of dangerous and violent confrontation and physical injury
15 to vehicle owners and towing operators, the stranding of vehicle owners and their
16 passengers at a dangerous time and location, and impeding expedited vehicle
17 recovery, without wasting law enforcement's limited resources.

18 (p) The remedies, sanctions, restrictions, and procedures provided in this section
19 are not exclusive and are in addition to other remedies, sanctions, restrictions, or
20 procedures that may be provided in other provisions of law, including, but not
21 limited to, those that are provided in Sections 12110 and 34660.

22 (q) A vehicle removed and stored pursuant to this section shall be released by
23 the law enforcement agency, impounding agency, or person in possession of the
24 vehicle, or any person acting on behalf of them, to the legal owner or the legal
25 owner's agent upon presentation of the assignment, as defined in subdivision (b)
26 of Section 7500.1 of the Business and Professions Code; a release from the one
27 responsible governmental agency, only if required by the agency; a government-
28 issued photographic identification card; and any one of the following as
29 determined by the legal owner or the legal owner's agent: a certificate of
30 repossession for the vehicle, a security agreement for the vehicle, or title, whether
31 paper or electronic, showing proof of legal ownership for the vehicle. Any
32 documents presented may be originals, photocopies, or facsimile copies, or may be
33 transmitted electronically. The storage facility shall not require any documents to
34 be notarized. The storage facility may require the agent of the legal owner to
35 produce a photocopy or facsimile copy of its repossession agency license or
36 registration issued pursuant to Chapter 11 (commencing with Section 7500) of
37 Division 3 of the Business and Professions Code, or to demonstrate, to the
38 satisfaction of the storage facility, that the agent is exempt from licensure pursuant
39 to Section 7500.2 or 7500.3 of the Business and Professions Code.

40 **Comment.** Subdivision (a) of Section 22658 is amended to correct a cross-reference to former
41 Civil Code Section 1351(a), (c).

WATER CODE

1 **Water Code § 13553 (amended). Recycled water**

2 SEC. ____ . Section 13553 of the Water Code is amended to read:

3 13553. (a) The Legislature hereby finds and declares that the use of potable
4 domestic water for toilet and urinal flushing in structures is a waste or an
5 unreasonable use of water within the meaning of Section 2 of Article X of the
6 California Constitution if recycled water, for these uses, is available to the user
7 and meets the requirements set forth in Section 13550, as determined by the state
8 board after notice and a hearing.

9 (b) The state board may require a public agency or person subject to this section
10 to furnish any information that may be relevant to making the determination
11 required in subdivision (a).

12 (c) For purposes of this section and Section 13554, “structure” or “structures”
13 means commercial, retail, and office buildings, theaters, auditoriums,
14 condominium projects, schools, hotels, apartments, barracks, dormitories, jails,
15 prisons, and reformatories, and other structures as determined by the State
16 Department of Public Health.

17 (d) Recycled water may be used in condominium projects, as defined in Section
18 ~~1354~~ 4125 of the Civil Code, subject to all of the following conditions:

19 (1) Prior to the indoor use of recycled water in any condominium project, the
20 agency delivering the recycled water to the condominium project shall file a report
21 with, and receive written approval of the report from, the State Department of
22 Public Health. The report shall be consistent with the provisions of Title 22 of the
23 California Code of Regulations generally applicable to dual-plumbed structures
24 and shall include all the following:

25 (A) That potable water service to each condominium project will be provided
26 with a backflow protection device approved by the State Department of Public
27 Health to protect the agency’s public water system, as defined in Section 116275
28 of the Health and Safety Code. The backflow protection device approved by the
29 State Department of Public Health shall be inspected and tested annually by a
30 person certified in the inspection of backflow prevention devices.

31 (B) That any plumbing modifications in the condominium unit or any physical
32 alteration of the structure will be done in compliance with state and local
33 plumbing codes.

34 (C) That each condominium project will be tested by the recycled water agency
35 or the responsible local agency at least once every four years to ensure that there
36 are no indications of a possible cross connection between the condominium’s
37 potable and nonpotable systems.

38 (D) That recycled water lines will be color coded consistent with current statutes
39 and regulations.

1 (2) The recycled water agency or the responsible local agency shall maintain
2 records of all tests and annual inspections conducted.

3 (3) The condominium's declaration, as defined in Section ~~1354~~ 4135 of the Civil
4 Code, shall provide that the laws and regulations governing recycled water apply,
5 shall not permit any exceptions to those laws and regulations, shall incorporate the
6 report described in paragraph (1), and shall contain the following statement:

7 "NOTICE OF USE OF RECYCLED WATER

8 This property is approved by the State Department of Public Health for the use
9 of recycled water for toilet and urinal flushing. This water is not potable, is not
10 suitable for indoor purposes other than toilet and urinal flushing purposes, and
11 requires dual plumbing. Alterations and modifications to the plumbing system
12 require a permit and are prohibited without first consulting with the appropriate
13 local building code enforcement agency and your property management company
14 or homeowners' association to ensure that the recycled water is not mixed with the
15 drinking water."

16 (e) The State Department of Public Health may adopt regulations as necessary to
17 assist in the implementation of this section.

18 (f) This section shall only apply to condominium projects that are created,
19 within the meaning of Section ~~1352~~ 4200 of the Civil Code, on or after January 1,
20 2008.

21 (g) This section and Section 13554 do not apply to a pilot program adopted
22 pursuant to Section 13553.1.

23 **Comment.** Section 13553 is amended to correct cross-references to former Civil Code
24 Sections 1351(h) and 1352.
